

ADMINISTRATIVE

LAW

MAY
1954

BULLETIN • Vol. 6 • No. 3

ADMINISTRATIVE LAW SECTION of AMERICAN BAR ASSOCIATION

Copyright 1954 by
The American Bar Association

Editor: Bernard Schwartz
Professor of Law, New York University School of Law

ADMINISTRATIVE LAW BIBLIOGRAPHY

During 1953, there was published A *Catalogue of the Law Collection at New York University with Selected Annotations*. The project which led to this volume of 1372 pages was, like so many other recent measures for improvement of the law, undertaken upon the suggestion of Chief Justice Arthur T. Vanderbilt. Edited by Julius J. Marke, the Law Librarian at New York University, the *Catalogue* presents a picture of the collection at one of the nation's major university law libraries. But it contains much more than a bare listing of volumes in the library in alphabetical order. The volumes listed are arranged in topical order, with each of the important fields of the law having its own heading.

Nothing contained herein shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors.

CONTENTS

Administrative Law Bibliography.....	107
Books before 1950.....	108
Books after 1950.....	119
French Administrative Law.....	121
Hoover Commission Task Force.....	122
Administrative Practice Questionnaire.....	123
Midwinter Meeting, 1954.....	125
Atlanta Council Meeting.....	130
Examiners Committee Report.....	137
Administrative Procedure Act Committee Report	150
Chairman's Page	156

Thus, anyone interested in a particular branch of the law, such as administrative law, has only to look in the *Catalogue* under the appropriate heading to find an adequate bibliography on the subject.

Even more important than this is the fact that the volumes listed in the *Catalogue* are accompanied by copious annotations. These are in the form of quotations taken from a variety of sources, mostly reviews in legal periodicals, generally one such quotation to each title annotated. Their effect is to give some information as to the nature of the contents of the books listed and as to their relative merits. As pointed out by one reviewer, "It may be objected that the commentators relied upon have been of unequal authority, that in some cases their judgments have not stood the test of time, and that, for these reasons, the annotations are partial, uneven, and lacking in historical perspective. . . . It would be easy to speculate that independent editorial evaluation would have produced a more valuable but less bulky volume. However, it is to be doubted that any person would be competent to attempt such a task, and Mr. Marke is to be congratulated for

adopting a method which, despite its deficiencies, is a workable and reasonably satisfactory solution of the problem of qualitative information." *John C. Payne, 6 J. of Legal Ed. 415 (1954).*

The publication of the *New York University Annotated Catalogue* furnishes a unique opportunity for a student of administrative law to obtain an annotated bibliography of the works published in his field. And, it should be noted, a good bibliography in the field of administrative law is something which has been conspicuously lacking for students of the subject. It is for this reason that it has been decided to devote a major portion of this issue of the Bulletin to a Bibliography on Administrative Law. With the permission of the *N.Y.U. Annotated Catalogue's* Editor, the first portion of this bibliography is taken, almost without modification, from the Administrative Law section of the *Catalogue*. This will not only furnish the members of this Section with a basic bibliography of treatises; it will also enable them to become acquainted with a matchless research tool. As aptly stated by the reviewer of the *Catalogue* already quoted, "It is predicted that this volume will become the indispensable vade mecum for all those having an interest in law books, and will continue as the standard desk book of law libraries for at least a generation."

It should be noted that the *Annotated Catalogue* itself covers works published only until December 1950. For volumes published since that time, the Editor of this Bulletin has had to compile his own materials, using the method of the *Catalogue*. In addition, it has been thought worthwhile to include a bibliographical note on

French administrative law, taken from a recent work by the Editor. These are based entirely upon the editor's own judgment and he must assume the responsibility for any errors or omissions that may be noted.

The Editor had expected to include, in this Bibliography, a selected list of articles, arranged topically. This has, however, been precluded by space limitations. It is hoped that it will be possible to include such a list in a future issue of this Bulletin.

BOOKS BEFORE DECEMBER 1950

As has been stated, the materials in this section are taken from the *N.Y.U. Annotated Catalogue*. To understand them, however, it is necessary to include the following key to the abbreviations used there:

Hicks. Materials—Hicks, Frederick C.
Materials and methods of legal research, 3d ed., 1942.

MacIver—MacIver, Robert M.
The web of government, 1947.

N.Y.U. Law—New York University.
School of Law. Law: a century of progress, 1835-1935, 3 vols., 1937.

Schmeckebier—Schmeckebier, Laurence F.
Government publications and their use, 2d ed., 1939.

Seckler-Hudson—Seckler-Hudson, Cathryn.
Bibliography on public administration, 1949.

Vanderbilt. Men—Vanderbilt, Arthur T.
Men and measures in the law, 1949.

* * * *

ADMINISTRATIVE TRIBUNALS AT WORK; a symposium, ed. by Robert S. W. Pollard. Lond., 1950. 154p.

This is a collection of seven essays dealing with justice as dispensed by administrative tribunals in Britain. The areas selected for treatment are mainly those expanding under the pressure of current British economic problems—problems some of which have their counterparts in the United States. The studies emphasize the familiar diversity in function, authority and procedure characteristic also of American administrative agencies. Although the essays are written simply enough for the layman to understand, the practical utility of the volume to the American lawyer is limited by the inescapable fact that the formulation of the policy of any agency is largely determined by the problems with which such an agency is required to deal; and since such problems are likely to be peculiar to the government which creates the agency, every agency's functions, authority and procedures will almost inevitably differ from those of administrative agencies in other countries. Nevertheless the studies are of value as a basis for comparison with the practical workings of comparable American agencies. *Col. L. Rev.* 50:406-407.

ALLEN, CARLETON K. Bureaucracy triumphant. . . . Lond., 1931. 148p.

Professor Allen's little book is a piece of vigorous and trenchant writing. He knows what he wants to say, and he says it in forthright fashion . . . he is gravely disturbed by developments in the modern state which seem to take the departments of government increasingly outside the purview of the courts. For him this is a violation of that rule of law which he believes to be the safeguard of civic freedom. Believing that the bureaucrat's appetite grows by what it feeds on, he has written these essays to expose the danger while there is yet time. . . . The growth of delegated legislation disturbs him: he is particularly distressed at the inability of Parliament seriously to control the civil service in the making of regulations and orders in council under statutory powers. . . . *H. J. Laski. Harv. L. Rev.* 45:754-756.

— Law and orders, an inquiry into the nature and scope of delegated legislation and executive powers in England. . . . Lond., 1945. 385p.

Giving his book the whimsical title *Law and Orders*, Dr. Allen has no doubt that there is too much administrative law-making and also, incidentally, too much administrative adjudication. He does not insist on a rigid separation of powers: he does not expect the legislative and executive functions to be kept completely apart in Britain; but he does ask that, in spite of the interdependence and interaction of the two, some essential equilibrium should be preserved. . . . *Cecil T. Carr. L.Q.R.* 62:58-59.

BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA. A manual on trial technique in administrative proceedings, and illustrative Federal administrative agencies. [Wash.], 1950. 80p.

BECK, JAMES M. Our wonderland of bureaucracy; a study of the growth of bureaucracy in the federal government, and its destructive effect upon the Constitution. . . . N.Y., 1932. 272p.

A negative approach to the growth of bureaucracy in the Federal Government emphasizing its effect upon the Constitution. *Seckler-Hudson*:16.

BLACHLY, FREDERICK F. Administrative legislation and adjudication, by Frederick F. Blachley and Miriam E., Oatman. Wash., D.C., 1934. 296p.

A study of administrative legislation and adjudication as it has developed in the Government of the United States. *Seckler-Hudson*:16.

— Federal regulatory action and control, by Frederick F. Blachly and Miriam E. Oatman. Wash., D.C., 1940. 356p.

A description of the organization, legal status, and interrelationships of the federal administrative pattern. *Seckler-Hudson*:16.

— Working papers on administrative adjudication. . . . [Wash.], 1938. 170p.

An analysis of the functions and procedures of the several agencies and of the appeals from their rulings. . . . *Schmeckebier*:279-280.

CARR, SIR CECIL T. Concerning English administrative law. N.Y., 1941. 189p.

. . . No other work on administrative and legislative matters, I think, equals it in felicity of expression, readability, quiet humor, and wealth of illustration—drawn in this case both from the author's experience and from the wide range of his legal and cultural study. Moreover, and this is not always to be expected in an English writer, he is familiar with American statutes and administrative law decisions, with the Attorney General's Committee on Federal Administrative Procedure and the New York inquiry under Mr. Benjamin, and with the books of Professors James Hart and John Dickinson. . . . As its cover says, the book is "a monument to the finest English scholarship." . . . *Lowell Turrentine. Harv. L. Rev.* 155. 160.

— Delegated legislation; three lectures. . . . Cambridge, 1921. 72p.

Three lectures designed to show: how laws made by legislative bodies depend for their effectiveness upon laws to be subsequently made by someone else; how administrative convenience and national necessity have brought this situation about; and the form and publication of laws. *Seckler-Hudson*:16.

CARROW, MILTON M. The background of administrative law. Newark, N.J., 1948. 214p.

. . . the author . . . presents the more rudimentary principles underlying the field of federal administrative law. If these are mastered, the reader is better prepared for a more thorough treatment of the subject matter; and adequate references in the footnotes provide a key for such a study. Primary emphasis is placed on the development of the various concepts which have been associated traditionally with the study of administrative law. But throughout the book consideration is given to the Federal Administrative Procedure Act's effect upon these concepts. In the first three chapters the growth of administrative law is described, its subject matter defined and its terminology classified. The remaining chapters consider the doctrine of separation of powers . . . limitation upon administrative adjudicative powers; separation of functions within the agency (with consideration of the applicability of the Administrative Procedure Act); the rule against delegation of power; and finally the scope of judicial review . . . the most rewarding chapter concerns limitations on administrative adjudicative powers. Two confusing doctrines are admirable analysed: questions of law and fact; and jurisdictional and constitutional facts. . . . The book is an excellent guide through the maze of administrative law. *Mich. L. Rev.* 46:712.

CHAMBERLAIN, JOSEPH P. The judicial function in federal administrative agencies [by] Joseph P. Chamberlain . . . Noel T. Dowling . . . [and] Paul R. Hays. . . . N.Y., 1942. 258p.

In the United States the developments of administrative adjudication by "agencies" of the Federal Government attract more and more attention. The Commonwealth Fund has now

published an important and authoritative analysis by three professors of law associated in the work of the Columbia University Legislative Drafting Research Fund . . . here is a thoughtful and scholarly book, neither overdocumented with the detailed procedures of the many agencies nor swamped with torrents of Court decisions. It will promote the understanding of that judicial function of American agencies, which, amid the increasing regulation of society and enterprise, supplements rather than supplants the work of Congress and the Courts in its contribution to the administration of the law. *C. T. Carr. L.Q.R. 59:87-98.*

COMER, JOHN P. Legislative functions of national administrative authorities. . . . N.Y., 1927. 274p.

. . . primarily concerned with administrative legislation; its history, its constitutional aspects and its safeguard. *Seckler-Hudson:16-17.*

COMMERCE CLEARING HOUSE. Administrative procedure; a handbook of law and procedure before federal agencies. 3d ed. N.Y., [1948]. 240p.

— Federal administrative procedure; practice and procedure before federal agencies. . . . N.Y., 1946-49. 2v. 2d ed.

CONSTANTINEAU, ALBERT. A treatise on the de facto doctrine in its relation to public officers and public corporations based upon the English, American, and Canadian cases including comments upon extraordinary legal remedies in reference to the trial of title to office, and corporate existence. . . . Toronto, Can.; Rochester, N.Y., 1910. 750p.

This work is designed to give a systematic and comprehensive exposition of the de facto doctrine in its relation to public officers and public corporations. The aim of the author has not been merely to set forth general principles, but to illustrate them adequately by cases selected from the English, American, and Canadian reports. . . . an endeavor has been made to state the law with such detail and abundance of illustration, that it can, to a satisfactory extent at least, be gathered from the work itself, without the necessity of resorting to the reported decisions. The text will frequently be found interwoven with verbatim quotations from the reports. *Preface.*

CUSHMAN, ROBERT E. The independent regulatory commissions. . . . N.Y., 1941. 780p.

Professor Cushman's handling of the legal problems connected with the independent commissions leaves little to be asked by way of greater clarity and realism. *Col. L. Rev. 42:333-338.*

DAISH, JOHN B. Procedure in interstate commerce cases, with illustrative precedents and forms. . . . Wash., 1909. 494p.

To lawyers litigating Interstate Commerce cases Mr. Daish's book is divided into two parts. The first part deals with the procedure before the Interstate Commerce Commission in all its phases. The second part takes up the procedure before the courts. These two parts comprise a little more than half the number of pages. The remainder is devoted to a splendid appendix containing, among other things, the acts of Congress relating to Interstate Commerce and forms for use in cases based thereon. *Yale L. J. 18:656.*

DAVID, LEON T. The tort liability of public officers. . . . Chicago, Ill., 1940. 93p.

Most of the material in this monograph was originally published as a series of articles in the Southern California Law Review and is based on the law of California, but it is stated that in general that law does not differ from the law of the other states upon the question of the tort liability of public officers. In his summary the author draws general conclusions as to the situations in which officers are liable for their misconduct or negligence and then discusses the relation of their liability of the governmental agency they represent. . . . *Minn. L. Rev. 26:820.*

DICKINSON, JOHN. Administrative justice and the supremacy of law in the United States. Cambridge, 1927. 403p.

A study of the problems of judicial review of administrative determinations centering around the question of how far the review shall extend in the light of an examination of the reasons underlying the practice of review and the purposes which it is expected to serve. *Seckler-Hudson:17.*

DODD, WALTER F. Administration of workmen's compensation. N.Y., 1936. 845p.

This treatise offers the first comprehensive survey of the actual administration of workmen's compensation laws throughout the United States. The distinct problems encountered under different types of statutes are carefully analyzed, the various methods evolved for their solution exhaustively considered, and the results in typical jurisdictions expertly charted, compared and evaluated. The author has done his work with thoroughness, intelligence and a scrupulous regard for accuracy. He has made a significant contribution in a field where material for investigation had accumulated in abundance and real need existed for its comprehensive examination. . . . The chief contribution of the work is supplied by its critical evaluation of techniques and results achieved in the forty-six states which now have workmen's compensation legislation. . . . *J. H. Beale. Harv. L. Rev. 50:1207-1211.*

EDMUNDS, STERLING E. The Federal octopus in 1933. A survey of the destruction of constitutional government and of civil and economic liberty in the United States and the rise of an all-embracing Federal bureaucratic despotism. . . . 3d ed. Charlottesville, Va., 1933. 150p.

ESSAYS on the law and practice of governmental administration; a volume in honor of Frank Johnson Goodnow . . . contributed by his students in grateful acknowledgment of his scholarly inspiration and counsel, edited by Charles G. Haines . . . and Marshall E. Dimock. . . . Balto., 1935. 321p.

Contents.—pt. I. Origin and meaning of public administration: Public administration and administrative law, by J. A. Fairlie.—pt. II. Executive leadership in administration: The President and federal administration, by James Hart. From political chief to administrative chief, by G. W. Spicer.—pt. III. Government in relation to industry: Judicial review of the findings and awards of industrial accident commissions, by C. G. Haines. Retirement or refunding of utility bonds, by M. R. Maltbie. The scope of the commerce power, by J. R. Powell.—pt. IV. Control of administration: State control of local finance in Indiana, by F. G. Bates. The inadequacies of the rule of law, by C. C. Thach. Forms of control over administrative action, by M. E. Dimock.

FAIRLIE, JOHN A. Administrative procedure in connection with statutory rules and orders in Great Britain, by John Archibald Fairlie. . . . Urbana, [1927]. 84p.

... Dr. J. A. Fairlie, Professor of Political Science in the University of Illinois, is a shrewd and sympathetic observer of our methods of government. His account of our Statutory Rule and Order system is workmanlike and well-informed. He traces in our statute-book the occasions of departmental legislation from early times to the year 1890, and the remarkable development thereafter. He analyses the agencies to which the law-making power is delegated, describes the extent of judicial control, and notes the tendency (since 1919) to require the positive Parliamentary confirmation of important Orders in Council and regulations. . . . *C.T.C. L.Q.R.* 43:281.

[FEDERAL BAR ASSOCIATION.] A collection of articles by law officers of the United States regarding the nature of their work. Wash., 1930. 74p.

FIELD, OLIVER P. Civil service law. Minneapolis, 1939. 286p.

It is a monument to Professor Field's industry that he has assembled over 1,500 significant cases (with no effort, in the manner of the horn-books, to pile up citations on any one point.) His keen sense of the realities of public administration led him to realize the equal importance of the opinions of legal and fiscal officers; but to go beyond the reports of opinions of the United States Attorney General and Comptroller General proved impracticable. Professor Field's tightly articulated treatise considers first the constitutionality and scope of civil service laws, and the establishment of the civil service; and then devotes a chapter to each step in the process of personnel administration: classification, examination, certification, appointment, promotion, demotion, suspension, removal and judicial review thereof. (The law of civil pensions is not dealt with.) The last chapter is a pretty case study in the interrelation of statutory and common-law remedies and of their effect on "substantive" rights. Throughout Professor Field addresses himself to the problems of the personnel administrator, and of the statutory draftsman. . . . This book is a notable addition to the literature of administrative law, indispensable to the operating official, personnel officer, draftsman, and attorney. *C.S. Ascher. Col. L. Rev.* 40: 363-365.

FIELD, OLIVER P. Research in administrative law; scope and method; an outline of suggested research projects. . . . [N.Y.?], 1938. 48p.

FINER, HERMAN. Theory and practice of modern government. Rev. ed. N.Y., [1949]. 978p.

Studies of bureaucracy in the neutral sense, that is, as connoting simply the administrative scheme within which a government operates, are of course numerous. One of the most comprehensive is the work of Herman Finer. . . . *MacIver* 474.

FRANK, JEROME. If men were angels; some aspects of government in a democracy. N.Y., [1942]. 380p.

In this book there is a shift in emphasis from the position taken by the author in *Law and the Modern Mind* (1930). While in both books he argues against the possibility of "legal soothsaying," in the earlier he stressed the uncertainty or vagueness in legal rules, but in this volume his emphasis is on the uncertainty as to the facts. His present position admits the possibility of agreement on the rules but denies the possibility (as a generalization) of agreement on the facts.

... One leaves the book with an all-pervasive impression that Frank has undergone a deep-sea change through his experiences as Chairman of the SEC and as judge. . . . *Konritz, Milton R. Hqrv. L. Rev.* 56:1020-22.

FRANKFURTER, FELIX. The public & its government. New Haven, [1930]. 170p.

Administrative boards and commissions are a very important part of government today. Lawyers have long been accustomed to the ways of courts, but these administrative tribunals call for a fresh understanding and new kinds of skills. . . . Mr. Frankfurter tells about the relationship of these tribunals to the past and something of the character of their work. . . . *Harv. L. Rev.* 58:598-99.

FREUND, ERNST. Administrative powers over persons and property; a comparative survey. Chicago, [1928]. 620p.

A comparative survey of administrative powers as exercised through regulatory legislation revealing the extent to which statutes operate through administrative action and discretion. *Seckler-Hudson* 17.

— The growth of American administrative law, by Ernst Freund, Robert V. Fletcher, Joseph E. Davies, Cuthbert W. Pound, John A. Kurtz and Charles Nagel. St. Louis, 1923. 190p.

... A slender volume of six essays must content itself with broad outlines—at best, intimations of crucial issues, without that acute posturing of problems which is part of the process of solution. Taken together these papers manage to convey a deal of what lies beneath their surface. *Felix Frankfurter. Harv. L. Rev.* 37:638-642.

GELLHORN, WALTER. Federal administrative proceedings. Balto., 1941. 150p.

The theoretical analyses are supported by a wealth of examples from administrative practice, drawn largely from the monographs written under Professor Gellhorn's direction for the Attorney General's Committee on Administrative Procedure. A brilliant and lucid exposition makes the volume accessible to the broader public. . . . It is indeed an indispensable guide for everyone who is interested not in the metaphysics but in the actuality of administrative law. *Hans J. Morganthau. Col. L. Rev.* 42:330-333.

GLASER, COMSTOCK. Administrative procedure; a practical handbook for the administrative analyst. Wash., D.C., [1941]. 207p.

... Goes deeply into the process of administration and the anatomy of the administrative organization. *Seckler-Hudson* 30.

GOODNOW, FRANK J. Comparative administrative law; an analysis of the administrative systems, national and local, of the United States, England, France, and Germany. . . . Student's ed. N.Y., 1902. 2v. in 1.

It is to American scholars . . . that the credit for the investigation, analysis, and presentation of the principles of administrative law, simultaneously with their development in actual practice, must go. The pioneer work has been done, by and large, by three men, successively—Goodnow of Columbia, Freund of Chicago (himself a student under Goodnow), and Frankfurter of Harvard—and their disciples. Goodnow was the first to perceive the peculiar significance for the study of administrative law of the comparative method as applied to the administrative systems of France, Germany, England and the United States, which, although involving common problems, also present sharp contrasts at many vital

points. While he recognized, as few have, the inseparability, in both the study and practice of the science of administration, of politics and law, his approach to the subject was predominantly that of the political scientist (and, significantly, most of his distinguished disciples are political scientists). *Vanderbilt, Arthur T. One Hundred Years of Administrative Law* 1:120-21.

— The principles of the administrative law of the United States. . . . N.Y., 1905. 480p.

A political approach to the growth of administrative law in the United States during an earlier period with emphasis upon underlying principles. *Seckler-Hudson*:17.

GRASKE, THEODORE WESLEY. Federal reference manual, a complete guide to all federal departments, having legal or quasi-legal status and courts. . . . [Wash., D.C.], 1939. 601p.

This valuable publication fills a longfelt gap in the sources of information necessary for the practitioner who has dealings with any of the Federal governmental agencies. In scope, it covers all of them (and this means fifty or sixty, by even the lowest method of reckoning); it describes their functions (usefully citing the appropriate organic Act); it provides for each one of them a chart, showing the interior organization of the office; it reprints their rules of practice for parties making claims or defenses or otherwise entitled to a hearing; and (last but not least) it names and lists the publications by which the agency makes its doings accessible to the public. . . . In view of the occasional changes and additions in this congeries of Federal governmental bodies, the present work would seem destined for occasional new editions in loose-leaf form. *J. H. Wigmore. Ill. L. Rev. 34*:118.

GT. BRIT COMMITTEE ON MINISTERS' POWERS. Report. . . . Lond., 1932. 138p.

This able committee, included among others a half dozen members of the House of Commons, five practicing lawyers, one of them a former Solicitor General, and three distinguished civil servants. After holding extensive hearings it filed its famous report in 1932—making eleven specific recommendations with respect to judicial and quasi-judicial decisions, some of which in view of the practice they criticize are fundamental and far-reaching. *Vanderbilt. Men*:110.

See also annotation for Hewart. The new despotism.

HART, JAMES. An introduction to administrative law. . . . 2d ed. . . . N.Y., [1950]. 819p.

This work, intended for undergraduate or graduate public administration students, integrates text, judicial opinions, and digested cases with synopses of material published elsewhere in texts or periodical literature. . . . Starting with material drawn from the Report of the Attorney General's Committee on Administrative Procedure, which illuminates the importance of the administrative process in modern government, the author covers both the mechanisms and the nature of judicial control over administrative actions, administrative procedure, and the enforcement of administrative decisions. Although most of the material is federal, and references are made, where appropriate, to the Federal Administrative Procedure Act of 1946, state administrative law is also extensively treated. . . . *Col. L. Rev. 50*:1159:60.

— The ordinance making powers of the President of the United States. . . . Balto., 1925. 339p.

. . . it is a genuine attempt to look past the fundamental law of our Federal Constitution to the principles and history back of that law, and to see our institutions as they are. Mr. Hart examines his subject from the viewpoints successively of analytical jurisprudence, the historical method, the field of political science, and finally from the standpoint of administrative technique. The author seeks to show the unity in governmental powers and the absence of irreconcilable contradictions between the delegation of ordinance mak-

ing functions to the President and the doctrine of the separation of powers; and that the President has, aside from delegation, independent legislative duties. . . . *J. B. Cheadle. Harv. L. Rev. 39*:525-526.

HARTMAN, HARLEIGH H. Procedure and proof before the Interstate Commerce Commission in rate and allied cases. . . . Wash., D.C., 1925. 181p.

It does not purport to be an annotated rules of practice, a digest of the cases relative to procedure before the Commission, or an exhaustive treatise on that branch of the law. It seeks to state the salient features of practice and procedure before the Commission in a logical and coherent form, in non-technical language, free from too minute analysis, but without sacrifice of any important consideration. The notes are an essential part of the study without which the text itself would be almost unintelligible. The citation of supporting cases has been made as complete as such a work warrants, but there has been no attempt to make the case references exhaustive. . . . The problems which arose in connection with federal control have not been considered for they are now of slight interest except as history. *Preface*.

HENDERSON, GERARD C. The Federal trade commission: a study in administrative law and procedure. New Haven, 1924. 382p.

This is a remarkably able book. It gives a vivid and informing account of the Federal Trade Commission's performance in a new and important field of administrative law. . . . The book begins with an excellent chapter on the political and legislative history of anti-trust legislation. There follows a chapter on the Commission's procedure and then a chapter on the findings of fact on which the Commission's orders are based. Unfair methods of competition, the use of which the Commission is directed to prevent, are discussed in two chapters of which one is devoted to deceptive and dishonest practices, and the other to practices which restrain trade. In his concluding chapter Mr. Henderson makes several constructive suggestions which would in his opinion make the Commission more effective as an administrative agency. *George Rublee. Harv. L. Rev. 38*:269-271.

HERRING, EDWARD P. Federal commissioners; a study of their careers and qualifications. Cambridge, Mass., 1936. 151p.

HEWART, GORDON H., baron. The new despotism. . . . Lond., [1945]. 307p.

In 1929 Lord Chief Justice Hewart devoted a book, *The New Despotism*, to a denunciation of the administrative agencies. His volume was the occasion for the appointment by Lord Chancellor Sankey of the Committee on Ministers' Powers. *Vanderbilt. Men*.

The sturdy polemics of Lord Hewart's "New Despotism," while serving to focus public interest upon a subject of undoubted importance, perhaps resulted in undue weight being attached by contrast to the more detached and judicial reasoning of the Committee on Ministers' Powers. *G. G. Phillips. L.Q.R. 52*:25.

HOTCHKISS, WILLARD E. The judicial work of the comptroller of the Treasury as compared with similar functions in the governments of France and Germany; a study in administrative law. . . . Ithaca, 1911. 164p.

Until we have demonstrated the possibility of combining democratic government with efficient administration, municipal, state and federal, the forces which regulate the course of administrative activity may well occupy a place of paramount importance in the attention alike of students and administrators. It is in the hope of contributing something toward a better understanding of these forces that this study is undertaken. *Preface*:v.

KADANS, JOSEPH. Federal administrative and court procedure. Balto., Md., 1949. 1v. 3d ed.

LANDIS, JAMES M. The administrative process. New Haven, 1938. 160p.

An important treatise on the administrative process with special emphasis on the Securities and Exchange Commission. *Seckler-Hudson*: 18.

LATTIN, WARD E. Federal administrative regulatory agencies and the doctrine of the separation of powers. . . . Wash., D.C., 1938. 95p.

It is the purpose of this paper to advance, and support as far as possible, the charge that a large number of the administrative organs of our national government are faulty in structure, with the result that they are failing in large measure to serve the needs and ends of good government. It is the further purpose to suggest, in the case of certain establishments of the Federal system, a plan of change which it is hoped will correct in some measure the gravest of the imperfections. *Foreword*: i.

LEISERSON, AVERY. Administrative regulation, a study in representation of interests. . . . Chicago, 1942. 292p.

One of the more pressing issues of contemporary democracy is the problem of maintaining effective contact between government administrators and effective public opinion as it is embodied in special interest groups. . . . Avery Leiserson's book on Administrative Regulation is notable as the first systematic and comprehensive attempt to analyze the problems involved in this basic issue of contemporary politics. . . . Through the systematic analysis of American and, to some small extent, of British experience, he has tried to formulate general conclusions as to the potentialities and limitations of this particular trend in administration. The result is a valuable contribution to the study of contemporary politics. *Fredrick M. Watkins. Harv. L. Rev. 56:150.*

LOUGHRAN, PATRICK H. Judicial review of federal executive action; a compilation of cases that exhibit the extent of the power in the federal judiciary. Charlottesville, Va., 1930. 1v.

This is the first of two volumes, the second of which will be published only if the profession demands. The volume under review has to do with what may be called the common law methods of review, that is, *injunctio*, *mandamus*, *assumpsit*, *certiorari*, *ejectment*, *replevin*, *habeas corpus*, etc. The second volume, which is in manuscript, so the author assures us, will contain the cases on review under special statutory proceedings. . . . The volume under review contains two titles. Each title is divided into two parts. The second part of each title is headed "The Collected Cases" and is made up of abstracts of and copious quotations from all or nearly all the cases falling under the various headings adopted. . . . It may be said here that much of the parts one could be omitted from the book with profit. Each of the parts one contains reference to, and long quotation from, numerous cases. Unlike those in the parts two, the cases in the parts one are not well abstracted. . . . In spite of the criticism here made, it should be stated that the author, in the present volume and in the one promised, has made a collection of material which, in whatever form or arrangement, is a distinct contribution to the field of administrative law. *Albert Langeulthig. Ill. L. Rev. 26:113-15.*

LYNCH, JAMES P. Judicial review of federal administrative adjudication. . . . [Wash.], 1939. 90p.

MACMAHON, ARTHUR W. Federal administrators; a biographical approach to the problem of departmental management, by Arthur W. Macmahon and John D. Millett. N.Y., 1939. 524p.

MAGAW, ELDEN S. Legal aspects of administrative hearings and findings. Wash., D.C., 1939. 105p.

Due to the extensive resort to the regulation of private and complex business enterprises there has developed a vast body of legal principles within which are included those procedural rules which have been held to be applicable to administrative tribunals, or executive officials, to whom have been delegated regulatory powers. The purpose of this dissertation is to ascertain those procedural principles which have been held to be applicable to those who exercise administrative functions of a regulatory nature—those judicial rules promulgated by the courts for the guidance of such agencies, and insisted upon by the judicial branch of our government as necessary for the preservation of the ideals and principles deemed fundamental in our system of government, and guaranteed by the Constitution which stands between the citizen and arbitrary exercise of power by assuring due process in the protection of life, liberty, and property. The materials utilized in this study are the statutes from which are derived the powers of the administrative agency, the Constitution, and the judicial decisions of the courts which are charged with the responsibility of maintaining, through the decision of controversies, those rights deemed fundamental. In accordance with the requirements governing this project, the scope of the research is confined to the Federal decisions. . . . *Preface.*

McFARLAND, CARL. Judicial control of the Federal trade commission and the Interstate commerce commission, 1920-1930; a comparative study in the relations of courts to administrative commissions. Cambridge, 1933. 214p.

. . . . Despite all strictures, the book is valuable in revealing the hitherto unfortunate judicial handling of the Trade Commission; in puncturing the doctrinal justification for that handling and in bringing to the fore some at least of the questions of policy involved in judicial review. As if in partial answer to the book's criticisms, the scene has changed once more since its publication. The Securities Act has added to the Trade Commission's functions; more vigorous blood has been injected into its personnel, and the Supreme Court, as we have seen, shows signs of allowing it wider latitude. The book marks the position of things just before the opening of the New Deal. *Robert L. Hale. Col. L. Rev. 34:580-583.*

MECHEM, FLOYD R. A treatise on the law of public offices and officers. . . . Chicago, 1890. 751p.

He has endeavored to begin at the beginning, showing what are public offices and who are public officers, and to give in consecutive chapters a view of the whole field, showing who are eligible to public office; how they may be elected or appointed, and qualified; how they may surrender, abandon or forfeit their rights and authorities; what authority they possess; how they should execute it; what liabilities attach to their acts; what rights they possess and what rights are possessed by the public; and finally by what remedies their duties and liabilities may be enforced. *Preface*: v.

MILLER, CLARENCE A. Interstate commerce commission law and procedure, cases and materials. . . . Wash., D.C., 1939. 620p.

The author of this practical treatise is General Counsel for the American Short Line Railroad Association, a member of the faculty of George Washington University Law School and author of the Legislative Evolution of the Interstate Commerce Act published in 1930. The professed aim of the book

is to present in a single volume the fundamentals of the Interstate Commerce Act, the essentials of pleading, practice and procedure before the Interstate Commerce Commission and the principles of judicial review of the Commission's decisions in such a manner as to serve not only as a guide to the student, but also as a practical handbook for the active practitioner. The case method of presentation has been employed. . . . Considerable space is devoted to offenses and prosecutions under the Elkins Act. But cases arising under the Motor Carrier Act have not been included because, as the author states, they have not developed in sufficient number, so far as settlement of principles is concerned, to justify inclusion. *Ezra Brainerd, Jr. U. Pa. L. Rev. 88:242.*

PATTERSON, EDWIN W. The insurance commissioner in the United States; a study in administrative law and practice . . . with a foreword by Felix Frankfurter. . . . Cambridge, 1927. 589p.

Dean Pound has pointed out that the problem of "rule" and "discretion" is basic in legal theory. The special problem of administrative law is the discovery of the possible limits of each. The present volume, inspired by Professor Frankfurter's view that "only a physiological study of the administrative law in action will disclose the processes, the practices, the determining factors of administrative decisions, and illumine the relation between commissions and courts now left obscure by the printed pages of court opinions," is an effort to throw light on this difficult question. Professor Patterson is a master of style. Under the influence of his pen the lifeless data of insurance statistics breathe the air of life and reality. He approaches the detailed discussion of the work of the Insurance Department with a broad realization of those causes that have led to the multiplicity of administrative tribunals and he is fully aware of the dangers involved in the centralization of control in the hands of officials like the Superintendent of Insurance. . . . This first volume of *Harvard Studies in Administrative Law* is concerned so much with the factual material before it, that it is practically of interest only to those who have special reasons for being concerned about the particular administrative tribunal under discussion. It is only in the general approach to the subject and in the attitude of the writer to the general problem of administrative law, that we find material which is of keen interest to all of us who have at any time realized the essential differences between erstwhile and modern problems in government. *M. Finkelstein. Harv. L. Rev. 41:111-113.*

PENNOCK, JAMES R. Administration and the rule of law. . . . N.Y., [1941]. 259p.

A consideration of the question: Is the liberty of the individual, in the nineteenth-century meaning of that phrase, compatible with "planning"? Discussion of certain fundamental safeguards which have developed around administrative action to insure the preservation of private rights. *Seckler-Hudson:18.*

A . . . very readable, and intelligent volume on a difficult but extremely important subject. *Carr:295.*

PIKE, JAMES A. AND FISCHER, HENRY G. Administrative law; reporter, service. . . . 1941-1950. [still current] Albany. 5v.

A comprehensive source of current administrative law in loose-leaf service form. Contains a "Guide" or "horizontal" index which broadly surveys the questions of law and procedure by the principal of law involved rather than by the federal agency involved. Also contains decisions, statutes, rules of administrative agencies, articles of current interest on phases of administrative practice as a supplement to case law needing interpretation and analysis, and digests of articles in the field appearing in law reviews, etc.

PORT, FREDERICK J. Administrative law. . . . Lond., N.Y., 1929. 374p.

Dr. Port has written a book which will be extremely instructive to all those interested in the growth of Administrative Law. He has treated the subject in the most comprehensive manner and from a statesmanlike point of view. The Historical Sketch and the discussion of American and French methods of dealing with the problem are of great value for anyone who, like the author, is seeking for the solution. Herein lies the great merit of the book. It is essentially an attempt to find the true lines of development for the future. . . . *H.C.W.T. L.Q.R. 46:122.*

POUND, ROSCOE. Administrative agencies and the law. [N.Y., 1946.] 26p.

Whatever name we may give to it, what we have to consider is the relation of the courts to the exercise of what are called quasi-judicial functions by administrative agencies. We have also to consider what is needed in the way of legislation to make the courts effective in securing to individuals the rights guaranteed by our constitutions and the fundamentals of full and fair hearing by an impartial tribunal and determination according to the law of the land which our Declaration of Rights proclaimed the birthright of Americans. Our problem is to secure this much without detracting from the efficiency of the administrative agencies in their legitimate operations in their legitimate field. *P. 6.*

— Administrative law; its growth, procedure and significance. . . . [Pittsburgh], 1942. 138p.

Contents.—Foreword by J. H. Wigmore.—The place of administration in the legal order.—The rise of administrative justice.—Administrative procedure.—The future of judicial justice.—Substitutes for law.

Professor Pound distills the legal philosophy and history of centuries as easily as advocates marshal the evidence of a current case. This book focuses the significance of administrative law against a background which includes the works of continental jurists, the struggle for the independence of courts in England and Colonial America, the case law of judicial review, and the social and economic reasons underlying the growth and procedure of the administrative process. . . . With the breadth of point of view which characterized all of his work, Professor Pound envisages the administrative tribunal as one of the vital parts in an integrated system of justice, doing its necessary work, but within its proper limits, subject to the fundamental American requirement of fair play under law. . . . *R. Oppenheimer. Md. L. Rev. 7:367-8.*

ROBINSON, GLEESON E. Public authorities and legal liability. . . . Lond., 1925. 286p.

The late war left the law-courts a legacy of litigation against public departments. . . . While the mere procedure has been antiquated, technical and obscure, the law itself has sadly needed exposition. Mr. Gleeson Robinson undertakes the task in his "Public Authorities and Legal Liability"—dealing not only with the liabilities and immunities of Government departments but also with those of local administrative bodies—and discharges it admirably. . . . *C.T.C. L.Q.R. 42:263.*

ROBSON, WILLIAM A. Justice and administrative law; a study of the British constitution. 2d. ed. rev and enl. Lond., 1947. 554p.

When first published in 1928, the book presented three revolutionary theses: firstly, that England had a large number of administrative courts; secondly, that these tribunals were developing a body of administrative law; thirdly, that this was a good thing provided that a number of reforms proposed by Dr. Robson were carried into effect. . . . In this second edition Dr. Robson has developed in the same luminous and persuasive style the same general arguments, with a great wealth of additional illustrations, and a history of

the dispute, on the whole subject, which has continued from the Lord Chancellor's Committee on Ministers' Powers in 1929 until the publication of Dr. Allen's Law and Orders in 1945. . . . *Geoffrey Saver. Mod. L. Rev.* 12:115-117.

[A third edition was published in 1951.]

SCHWARTZ, BERNARD. American administrative law. Lond., [1950]. 144p.

This little book of 129 pages of text seeks to present the essentials of American administrative law to British readers, and I should judge that it does so admirably, for it paints with a broad but nevertheless accurate brush the leading features of our federal administrative law against its background of economic and social conditions and of American constitutional law, comparing at every turn American practice with British experience . . . it is the best summary of American federal administrative law that I have ever seen. . . . The book consists of seven short chapters, one treating of the administrative process generally, two dealing with the legislative aspects of administrative law, three concerned with administrative justice, and a final chapter on judicial review. . . . *A. T. Vanderbilt. A.B.A. J.* 36:836.

— Law and the executive in Britain, a comparative study. N.Y., 1949. 388p.

. . . What Law and the Executive in Britain gives to its readers is a basic familiarity with the principal doctrines governing executive action in Great Britain; a more enlightened understanding of the fundamentals of administrative law in this country and a tremendous admiration for the ability, both as a lawyer and a writer, of Bernard Schwartz. The work should be required reading for the critical student of the administrative process, and should prove a valuable aid to the administrative practitioner as well. *Thomas H. Wall. Geo. L. J.* 38:337-339.

SEYMOUR, WHITNEY N. Current developments in constitutional and administrative law. [N.Y., 1940?] 45p.

SHARFMAN, ISAAH L. The Interstate commerce commission; a study in administrative law and procedure. . . . N.Y., 1931-37. 4v. in 5.

. . . The work is scholarly, thorough and well proportioned . . . upon the jurisdiction, activities and procedure of the Commission . . . the study as a whole will make a most valuable contribution to the literature of administration. *E. R. Johnson. Pol. Sci. Q.* 46:477.

SIEGHART, MARGUERITE A. Government by decree; a comparative study of the history of the ordinance in English and French law. . . . Lond., 1950. 343p.

The growth of the administrative process has been quick, rambling and, in some cases, unhappy. As lawyers we must examine the machinery in the light of new conditions and, accepting the facts as they are, the emphasis must be on control rather than the desirability of administrative justice . . . Mrs. Sieghart's book is an examination and investigation of the whole question. In doing so she undertakes a searching analysis of the administrative process in France, and this analysis is valuable as it enables us to compare our system with the French. It shows us, too, that since our system has been piecemeal and unplanned it offers none of the safeguards which are constitutionally inherent in France. The book falls into three complete parts: The English system, the French system, both treated historically, and a concluding chapter on the writer's conclusions and recommendations. This volume is well written and documented. . . . *Scot. L.*

SINGEWALD, KARL. The doctrine of nonsuability of the state in the United States. . . . Balto., 1910. 117p.

This paper is a study of the questions of public law involved in the doctrine of immunity of the state from suit, and especially of the relation of this doctrine to suits against public officers. It does not include a consideration of the extent to which suits against themselves are allowed by the United States and by the several States, nor of the principles of law governing cases brought under such permission. The determination of the philosophical basis of the responsibility of the state, also, does not fall within the scope of this paper. The study is based mainly on the cases decided by the supreme court of the United States, both because of the greater importance of those cases, and because the supreme court is the only tribunal before which has come any considerable number or variety of suits of this class. *Preface i.*

SMITH, JOSHUA T. Government by commissions illegal and pernicious. The nature and effects of all commissions of inquiry and other crown-appointed commissions. The constitutional principles of taxation; and the rights, duties, and importance of local self-government. . . . Lond., 1849. 380p.

Lord Hewart's "The New Despotism" has acquainted the American bar with the fact that not all English lawyers view with equanimity the vast extension of administrative power which has taken place in the birthplace of the Common Law. However, Government by Commissions, by J. Toulmin Smith, Barrister-at-Law of Lincoln's Inn, a vigorous polemic aimed at much the same evils against which Lord Hewart inveighed, seems generally to have been overlooked. So striking is the resemblance between what Mr. Smith has written and the utterances of those who deplore current trends in this country, that I have requested the editors of the Journal to permit me to bring this work to its readers' attention. . . . While it is the aggrandizement of power in the hands of commissions that forms the substance of Mr. Smith's study, in his preface he makes clear that he regards this as only an evil means essential to a still more pernicious end: centralization of power in the national governments, with the consequent diminution of responsibility in local government. In "the fast-encroaching and all-grasping system of Centralization" he finds not only a menace to Great Britain but an explanation of unrest and revolution in continental Europe. In the author's development of this thesis the parallel to the American scene is less close than in other portions of the work, for in England, of course, the distribution of powers between state and nation is not in issue; but his reiterated charge that local self-government is the object of "especial dislike to those who delight in nostrums and new experiments" has a familiar ring. . . . In his arraignment of "government by commissions," Mr. Smith charges two offenders, commissions of inquiry and administrative commissions. . . . The author's basic complaint is that these commissions, far from constituting an impartial effort to arrive at a true understanding of a problem, represent a contrivance to give propaganda the semblance of authoritative truth. . . . Mr. Smith's polemic was published in 1849. . . . *David F. Cavers. Yale L. J.* 47:675-678.

STEPHENS, HAROLD M. Administrative tribunals and the rules of evidence; a study in jurisprudence and administrative law. Cambridge, 1933. 128p.

. . . In the main it is a study of the methods employed in taking evidence by the Inter-State Commerce Commission, the Federal Trade Commission, State Public Service Commissions, Tax Assessment and Equalization Tribunals in the States, and the United States Bureau of Immigration (in respect of alien deportation and exclusion hearings). But its chief value is its conclusions. Mr. Stephens is critical of the system, or lack of system, actually employed. . . . *W.I.J. L.Q.R.* 49:589.

TEDROW, JOSEPH H. Regulation of transportation; practice and procedure before the Interstate Commerce Commission. 2d ed. Dubuque. [1947.] 222p.

... The principal objective was the compilation of instructional materials for admission to practice before the Interstate Commerce Commission. "This work is intended to be elementary—a primer so to speak." ... Certain features the author incorporates are very helpful, i.e., the collections of similar and dissimilar sections of Parts I, II, III and IV of the Interstate Commerce Act, as amended; the checklists of quiz questions for hopeful laymen-practitioner aspirants; the listings of sections of the Act, and some of the decisions, involving points of practice and procedure to save the novice's time; and the collections of the regulatory acts in historical and analytical order are about as helpful guides to understanding the structure of regulation as it has been the pleasure of this reviewer to encounter. ...

This second edition suffers from the author's persistent habit of using an abbreviated outline form. *Orba F. Traylor. Mo. L. Rev. 13:342-343.*

THROOP, MONTGOMERY H. A treatise on the law relating to public officers and sureties in official bonds. N.Y., 1892. 963p.

UHLER, ARMIN. Review of administrative acts; a comparative study of the doctrine of the separation of powers and judicial review in France and the United States. ... Ann Arbor, 1942. 207p.

... Mr Uhler's monograph ... is a timely study of the effects of the interpretation and application of the doctrine of the separation of powers and of judicial review of administrative action as these matters are related to and have influenced the development of administrative justice in France and in the United States. *C. G. Haines. Harv. L. Rev. 56: 321-22.*

U.S. ATTORNEY GENERAL'S COMMITTEE ON ADMINISTRATIVE PROCEDURE. Final report of the Attorney general's committee on administrative procedure. Wash., 1941. 474p.

— Monograph no. 1-[27]. [Wash., 1940.] 27 no. in 34v.

The Attorney General's Committee on Administrative Procedure consisted of twelve persons, with Dean Acheson, of the Washington, D. C., bar, as Chairman, and Professor Walter Gelhorn, of Columbia University Law School, as Director. As a preliminary to its own report, the Committee caused to be prepared twenty-seven studies of individual Federal agencies. These were published as monographs on Administrative Procedure in Government Agencies. ... Although the monographs, and the Report, deal ostensibly with procedure only, they are in fact much broader in scope. From them one may learn what the agencies are created to do, as well as the methods by which they operate. The Final Report ... was designed to serve two purposes, (1) to guide the existing agencies in improving their own methods, and (2) to place before Congress matters which could best be dealt with by new legislation. *Hicks. Materials: 163-164.*

In 1941, this committee, which had been at work since early in 1939, completed its extensive studies and made its final report. The committee, composed of representatives of the executive branch of the federal government, the courts and the practicing bar, made thorough going recommendations both as to policies and as to possible legislation; and it was expected that its report and recommendations "should serve as a guide to administrative officials." In 1942 a similar study was concluded for the State of New York (see Administrative law—N.Y.). *Vanderbilt, A. T. Annual Survey of Am. Law. 1942: 89.*

U.S. COMMISSION ON ORGANIZATION OF THE EXECUTIVE BRANCH OF THE GOVERNMENT. Commission Reports.

Budgeting and Accounting; Statistical Activities.

Business Enterprises.

Concluding Report.

Department of Agriculture.

Department of Commerce.

Department of the Interior.

Department of Labor.

Foreign Affairs.

General Management of the Executive Branch.

Office of General Services.

Medical Activities.

National Security Organization.

Overseas Administration; Federal-State Relations;

Federal Research.

Personnel Management.

Post Office.

Regulatory Commissions.

Social Security, Education, and Indian Affairs.

Treasury Department.

Veterans' Affairs.

The Commission, popularly known as the Hoover Commission, was directed by Congress to study and investigate the organization and methods of operation of the executive agencies of the national government for the purpose of making recommendations which would promote economy, efficiency, and improved service in the transaction of the public business. The twelve members—a bipartisan group including members of Congress, administrative officials, and prominent citizens, under the chairmanship of former President Herbert Hoover—called to their aid some 300 persons qualified and experienced in a wide variety of fields. ... It is not surprising that, given the wide range of problems dealt with in its reports, the Commission was not able to achieve complete unanimity in its findings and recommendations. Similarly, students and practitioners of government and administration will not concur in all of the proposals. But few will dissent from the general conclusion that an excellent and thorough job has been done, and that as a result an opportunity of unparalleled significance is offered to achieve noteworthy changes and improvements in our national administrative structure. *Lloyd M. Short. Am. Pol. Sci. Rev. 43:812-814.*

— The Hoover Commission report on organization of the Executive branch of the Government. N.Y., [1949]. 524p.

Students of government will find material for years to come in this 524 page volume representing the end product of the most complete investigation of the functioning of the executive branch of the federal government ever conducted. ... *Foreign Policy Bull. 28:No. 40-41, p. [4].*

U.S. CONGRESS. Senate. Committee on the judiciary. Administrative procedure act, legislative history, 79th Congress, 1944-46. ... Wash., 1946. 458p.

Culminating more than a decade of investigation, analysis and debate under the leadership of practicing lawyers working through the American Bar Association, on June 11, 1946 "an act to improve the administration of justice by prescribing fair administrative procedure" became law at the Second Session of the 79th Congress. This law which may be cited as the Administrative Procedure Act, is designed to protect the individual citizen from the hazards of uncertain and slipshod administrative procedures resulting in unfair and arbitrary action, and yet seeks to preserve the flexibility, the resourcefulness and progressiveness of the administrative agency at its best. ... The act sets up a code of administrative procedure which is substantially in the form suggested by the minority of the Attorney General's Committee on Administrative Procedure. The act is comprehensive in scope and in terms

applies to all agencies, but many exceptions are provided for as to certain types of functions. *Vanderbilt, A. T. Annual Survey Am. Law. 1946:187-188.*

U.S. DEPT. OF JUSTICE. Attorney General's manual on the Administrative procedure act. [Wash.], 1947. 139p.

The Attorney General's Manual is a running commentary upon the Act, section by section, which enlarges upon the meaning and practical consequences of the several provisions from the point of view of government administrators attempting to comply with its requirements. As the Attorney General's introduction states, the Manual was written in the Office of the Assistant Solicitor General, which played a large part on behalf of the Attorney General in the drafting of the Act, in order to afford guidance to the various federal administrative agencies. It is now made generally available because of great public demand for it. *Ind. L. J. 23:365.*

U.S. PRESIDENT'S COMMITTEE ON ADMINISTRATIVE MANAGEMENT. Administrative management in the government of the United States. January 1937. [Wash., 1937]. 47p.

— Report with studies of administrative management in the federal government. Submitted to the President and to the Congress in accordance with Public law no. 739, 74th Congress, 2d session. Wash., 1937. 382p.

VAN VLECK, WILLIAM C. The administrative control of aliens; a study in administrative law and procedure. . . . N.Y., 1932. 260p.

This volume is a product of the author's study of the law and procedure through which aliens are excluded and expelled from the United States. Primarily, the text is a statement of facts found by Dean Van Vleck in an investigation conducted at the Ellis Island Immigrant Station. The recital is marked by frequent references to the particular sources from which the author obtained his information, and to the statutes and judicial decisions that are supposed to guide the immigration officials in the performance of their highly important work. Those who are familiar with the administration of our immigration laws cannot help but be impressed by the earnestness and fairness with which the Dean has presented the best and the worst of our system of alien control . . . the Dean has made a valuable contribution to the study of our alien problem. The problem, of course, has economic, political, and administrative aspects, and those who are interested in any one of them will benefit by a perusal of the book. *John C. Knox. Harv. L. Rev. 46:547-549.*

VOM BAUR, FRANCIS T. Federal administrative law; a treatise on the legal principles governing the validity of action of federal administrative agencies, and of state agencies on federal questions. . . . Chicago, 1942. 2v.

This book is not considered as sufficiently comprehensive or useful to be recommended by Prof. Gellhorn. See *Harv. L. Rev. 56:660-61.*

WARREN, GEORGE. The Federal administrative agencies; proceedings of an institute conducted by the New York University School of Law on February 1-8, 1947. [N.Y.], 1947. 630p.

The Federal Administrative Procedure Act marks the beginning of a new era in administrative law. The act has been aptly described as the most important statute affecting the administration of justice in the federal field since the passage of the Judiciary Act of 1789. The impact of the new law

has been felt by the federal administrative agencies and the attorneys who practice before them. Since the passage of the act the various boards, departments, and commissions affected by the act have been at work revising their procedures and promulgating new rules and regulations in accordance with its provisions. The Institute, the proceedings of which are reported herein, was planned for the purpose of informing the bar of the profound changes that have been made and are being made in the administrative process of the Federal government. The Institute was designed to give an opportunity to government personnel, attorneys at law, and the faculties of law schools to hear outstanding experts discuss the act and describe its application to the more important federal administrative agencies. *A. T. Vanderbilt. Foreword:iv-v.*

WILLIS, JOHN. The parliamentary powers of English government departments. Cambridge, 1933. 214p.

This is the best book that has yet been published on delegated legislation in England. It has learning, it is well written, and it possesses what is still rare in books of law—a graceful power of wit. . . . The real burden of Mr. Willis' examination is to show—what, indeed, emerged in the Report of the Committee on Ministers' Powers—how wholly devoid of substance was the agitation against delegated legislation of which Lord Hewart, C.J., made himself the leader. Delegated legislation is both desirable and necessary; and the supposed invasion of private rights which its critics insist it has effected turn out, on any serious examination, to be largely illusory. . . . *Harold J. Laski. Harv. L. Rev. 47:1452-1453.*

WYMAN, BRUCE. The principles of the administrative law governing the relations of public officers. . . . St. Paul, Minn., 1903. 641p.

By Jurisdiction

California

ELLIOTT, SHELDEN D. California cases and materials on administrative law and procedure. . . . [Los Angeles], 1947. 262p.

Canada

HANSER, HUGO E. Aspects and sources of Canadian administrative law. . . . N.Y., 1946. 403p.

Florida

INSTITUTE OF GOVERNMENT, Tallahassee, Florida. Administrative law of Florida, relating to certain state agencies. Tallahassee [1948?]. 367p.

Illinois

FINS, HARRY G. Illinois administrative procedure. . . . Chicago, [1942]. 465p.

Indiana

INDIANA. Laws, statutes, etc. Indiana administrative code; laws, rules, regulations and annotations, opinions attorney general, ed. by Frank E. Horack, jr. . . . Indianapolis, [c1941.]. 2v.

New Jersey

VOGEL, CLARK C. Study of state administrative agencies in New Jersey. [Newark, N.J.], 1941. 283p.

New York

NEW YORK (STATE) COMMISSIONER to study, *examine and investigate the exercise of quasi-judicial functions by any board, commission or department of the state*. Administrative adjudication in the state of New York. Report by Robert M. Benjamin, as commissioner. . . . [Albany?], 1942. 6v.

Mr. Benjamin's work is splendidly done; and its value and interest are the greater because it comes so shortly upon the heels of the report of the Attorney General's Committee on Administrative Procedure. Mr. Benjamin was his own Director of Research; he proceeded in much the same manner as did the Attorney General's Committee, using "written materials, conferences, public hearings, and direct observation." The formal materials included statutes, rules, reports, descriptive memoranda prepared by the agencies at Mr. Benjamin's request, sample studies of records of cases, and other material in the agency files. Conferences were held with the administrative personnel of all ranks of each agency, with judges and academicians, and with organizations of labor, business, and the bar. Public hearings were held in Albany, Buffalo, and New York City. The Commissioner and his staff attended hearings and meetings of the agencies "running into many hundreds." . . . Mr. Benjamin tried particularly to work with the active administrative staffs on all levels, and to arrive at mutually acceptable conclusions. He sought, too, to make his Report a primer of principle and practice. There is reason to believe that already it is being used as a guide in the reform of old, and preparation of new, procedures. *Louis L. Jaffe. Harv. L. Rev. 36:706, 07, 37, 38.*

Mr. Benjamin has not only made a thorough study of the court decisions, statutes, and the actual workings of administrative agencies, but he has also shown a sympathetic understanding of the feelings of those who must deal with such agencies. . . . Ardent would-be reformers should read this report before undertaking to draw a code of procedure for administrative agencies. . . . On the whole, the author concludes that New York may take merited satisfaction in its system of administrative adjudication. *James P. Hart, A.B.A.J. 29:325.*

Pennsylvania

PENNSYLVANIA. *General Assembly. Joint State Government Commission*. Report to the General Assembly of the Commonwealth of Pennsylvania on uniform practice and procedure before departments, boards and commissions of the Commonwealth. Harrisburg, 1943. 23 l.

Texas

LIPSCOMB, ABNER E. Judicial control of administrative action in Texas; a study in administrative law. . . . Waco, Tex., 1938. 192p.

Casebooks

FRANKFURTER, FELIX. Cases and materials on administrative law, by Felix Frankfurter . . .

and J. Forrester Davison. . . . 2d ed. Chicago, 1935. 651p.

A collection of materials intended to introduce the student to the basic considerations which underlie the evolution of a growing field of law. *Seckler-Hudson:17.*

Frankfurter broke ground by reexamining the separation of powers doctrine. He sought to blast a way through its formal dogmas for the entrance of more dynamic and heterodox views of the distribution of law and policy making functions. *L. L. Jaffe. U. Pa. L. Rev. 96:923-924.*

FREUND, ERNST. Cases on administrative law, selected from decisions of English and American courts. 2d ed. . . . St. Paul, 1928. 745p.

Freund took for granted the then situation respecting the relative rates in the law making process of legislator, administrator and court. He delimited the field in terms primarily of common law judicial control of the traditionally accepted scope of administrative powers. *L. L. Jaffe. U. Pa. L. Rev. 96:923.*

GELLHORN, WALTER. Administrative law: cases and comments. 2d ed. Brooklyn, 1947. 1138p.

Here is a casebook that represents, in admirable richness and extension, Professor Gellhorn's conception of the issues in administrative law which are intrinsic permanently and crucial today. . . . Not only does he summarize the best of the pro and con material available, but he offers also his own conclusions and argues down those of his enemies. . . . *L. L. Jaffe. Harv. L. Rev. 54:367-368.*

GOODNOW, FRANK J. Selected cases on American administrative law, with particular reference to the law of officers and extraordinary legal remedies. . . . Chicago, 1906. v.p.

— Selected cases on government and administration. . . . Chicago, 1906. 250p.

— Selected cases on the law of officers including extraordinary legal remedies. . . . Chicago, 1906. 709p.

KATZ, MILTON. Cases and materials on administrative law. . . . St. Paul, Minn., 1947. 1108p.

Katz's is a book built . . . around the guiding idea of law making as a continuing process, a constant creative movement. He limits his material to federal spheres, with primary attention to the Interstate Commerce Commission and the Securities and Exchange Commission. *L. L. Jaffe. U. Pa. L. Rev. 96:924.*

McFARLAND, CARL. Cases and materials on administrative law, by Carl McFarland and Arthur T. Vanderbilt. Albany, [1947]. 1048p.

The book is remarkable both for the degree and thoroughness of its analysis and the wealth of its material. The book sets out to present material on every idea, conception, distinction or field which the authors believe to bear upon the subject as it comes up federally and in the states. . . . It is a notable source book. *L. L. Jaffe. U. Pa. L. Rev. 96:925.*

[A second edition was published in 1952.]

MAURER, ROBERT A. Cases and other materials on administrative law. . . . Rochester, N.Y., [c1937]. 608p.

SEARS, KENNETH C. Cases and materials on administrative law. . . . St. Paul, Minn., 1938. 800p.

STASON, EDWIN B. The law of administrative tribunals; a collection of judicial decisions, statutes, administrative rules and orders and other materials for use in courses on administrative law. . . . 2d ed. . . . Chicago, 1947. 731p.

. . . the Stason book presents a fair and well-balanced, if somewhat sparse, cross-section of administrative law in its present day systematic form. *L. L. Jaffe. U. Pa. L. Rev. 96:926.*

BOOKS AFTER 1950

COOPER, FRANK E. Administrative agencies and the courts. Ann Arbor, Mich., 1951. 470p.

The relation of the courts to the administrative process is the central theme of Professor Cooper's book. The author's purpose, to paraphrase his own statement, is to bring together the leading cases which have laid down the principles that govern the decision of litigated matters before the agencies and to describe the criteria and techniques of administrative adjudication within the standards imposed by the courts. The result is a basic survey of the administrative process that should have appeal both to the law student and the practitioner. The major parts of the book are familiar: The Place of Administrative Agencies in the Judicial System, Underlying Constitutional Questions, Procedure in Adjudication of Cases, Rule Making and Judicial Review. *Edmund A. Stephan. Notre Dame Law. 27:479.*

DAVIS, KENNETH C. Administrative law. St. Paul, Minn., 1951. 1024p.

Davis on Administrative Law makes a conscious effort to treat in some detail all of the important problems which are considered in this country to pertain to the field of administrative law. In this respect, it contains the most complete account of administrative law that has yet been published in this country. . . . Its publication marks an important event in the history of American administrative law. It indicates that administrative law in this country has attained a certain degree of growth and maturity. The period of synthesis and systematization is now at hand. . . . *Bernard Schwartz. Brooklyn L. Rev. 18:148.*

FRIEDMANN, WOLFGANG. Principles of Australian administrative law. Melbourne, 1950. 109p.

Professor Friedmann's brief survey will be read with interest by all who have come to admire the deep learning and robust common sense to be found in the *Commonwealth Law Reports*. The title is a little misleading for the bulk of the book is a straightforward exposition of the principles of English public law . . . and the Australian cases are added only by way of gloss or comment . . . the book does indicate where the more important material may be found, and as the Preface says, it is to be hoped that "this preliminary study" of "rich but largely uncharted material" will encourage others. *R. F. V. Heuston. L. Q. Rev. 68:250.*

GRIFFITH, J. A. G., and STREET, H. Principles of administrative law. London, 1952. 316p.

Selecting those aspects (of constitutional law) which deal with the law of administration the authors have sought to provide a volume for the use of law students and lawyers containing an organized presentation of relevant principles of administrative law. The task thus set out is very difficult in that it must cover the vast expansion of controls exercised

by the State. To cover all these problems in a book of slightly over 300 pages is a formidable achievement and it is not surprising that there is still room for improvement. To have done it as well as it is done in this book is noteworthy. *J. Forrester Davison. Colum. L. Rev. 53:297.*

HEADY, FERRELL. Administrative procedure legislation in the states. Ann Arbor, Mich., 1952. 137p.

In this modest but incisive study, Professor Heady . . . makes an informative and valuable contribution to the literature of administrative procedure. His monograph in pamphlet form embodies not only the results of careful study of statutory texts, judicial decisions and official regulations, but also data gathered at first-hand in an on-the-scene survey of five representative states possessing administrative procedure legislation and one state, Oklahoma, in which determined efforts to secure the passage of such legislation are continuing. . . . The author's objectivity and ability to analyze the questions presented are admirable. . . . *Ralph F. Fuchs. Vand. L. Rev. 6:143.*

KEETON, GEORGE W. The passing of Parliament. London, 1952. 208p.

It is easy to dismiss the views articulated by Dean Keeton as extreme, for his short study is a direct descendant of Lord Hewart's *New Despotism*. And, like that attack of the Lord Chief Justice upon the administration, its outstanding characteristic is certainly not the moderation with which it is written. The very title of the book—*The Passing of Parliament*—serves to show this. By it, Dean Keeton seeks pithily to picture what he considers the outstanding feature of the contemporary English constitutional system, namely, the transfer of effective governmental authority from the legislative to the executive branch. . . . Much of Dean Keeton's survey is devoted to the changes in English administrative law resulting from the transformation of Parliament. Emphasis is placed upon the legislative and judicial powers delegated to the administration, their exercise, and the tendency, which most students of the British system deplore, to render administrative action immune from judicial control. . . . *Bernard Schwartz. Northwestern L. Rev. 48:394.*

KUCHMAN, CARL. California administrative law and procedure. San Francisco, 1953. 376p.

Although there have appeared in the past year or two several treatises dealing with federal administrative law and procedure, Mr. Kuchman's book is one of the first to undertake a comprehensive restatement of administrative law on the state level. Such a work, by its very existence, will serve to shape the course of the law in less advanced jurisdictions. . . . [It] deals primarily with these substantive law provisions, both statutory and constitutional, which cut across all administrative authority, and with those common procedural aspects that emanate from the enabling acts, the Administrative Procedure Act, the constitution, and, at times, the rules and regulations of the agencies themselves. As such it is essentially a book on administrative procedure. . . . *Victor S. Netterville. Southern Calif. L. Rev. 27:116.*

LAVERY, URBAN A. Federal administrative law. St. Paul, Minn., 1952.

Mr. Lavery's aim appears to be somewhat more limited than that of the other recent writers in the field. His goal is not to present a critical treatment of the major problems of federal administrative law. His work is intended essentially as a summary, more than as a critique, and of only certain aspects, rather than as an overall treatise on the subject. The author's statement in his Preface that the book attempts to "provide an overall treatise on the Practice and Application of Federal Administrative Law" is consequently some-

what misleading. Actually, the scope of this book is much less broad, since it contains essentially a discussion of the Federal Administrative Procedure Act and of federal rule making. *Bernard Schwartz. U. of Pa. L. Rev. 101:1092.*

PARKER, REGINALD. Administrative law. Indianapolis, Ind., 1952. 344p.

The intention of this volume is to provide a "concise text on administrative law." It does not treat the subject with encyclopedic detail, but it manages nevertheless, to achieve a rather comprehensive coverage of what the author terms "general administrative law." . . . The attempt at comprehensive coverage within a relatively small volume has meant that the author has had to abstain from a full discussion of the content of opinions in many leading cases and has instead confined himself to a summary evaluation of the logic of case holdings. . . . It is unfortunate that the straightforward treatment of legal problems should be marred by criticism of the Federal Administrative Procedure Act that at times degenerates into unjustified carping. . . . *Nathan D. Grundstein. Conn. L. Q. 38:484.*

SCHWARTZ, BERNARD. French administrative law and the common-law world. New York, 1954. 367p.

. . . The book is, to this reviewer's knowledge, the first modern, comprehensive treatment in English of what is today perhaps the most highly developed system in the entire world of judicial review of administrative action: the French *droit administratif*. Professor Schwartz gives an excellent survey of the structure of the French system of administrative law, its most important substantive principles and the special problems which arise out of the coexistence of administrative courts and regular courts. There is no better introduction to these aspects of modern French administrative law available to the American lawyer. Professor Schwartz is to be congratulated in having accomplished in such an interesting and clear fashion the always difficult task of explaining a foreign legal system. . . . He has done an admirable job in describing, for American lawyers, the hierarchy and composition of the French administrative courts and their relation to the ordinary law courts; the structure and general powers of the French administration; the proceedings through which, and the rules under which, administrative action can be reviewed; the availability and scope of the review accorded and the liability in French law of the state and of public officers. . . . *Arthur von Mehren. U. of Pa. L. Rev. 102:698.*

SCHWARTZ, BERNARD. Le Droit administratif americain: notions g n rales. Paris, 1952. 249p.

This latest book, written in French, is a remarkable little textbook for a variety of reasons. First, the book discusses clearly and accurately in eight comparatively short chapters the entire breadth and scope of the administrative process. Although it would be a sufficiently worthwhile accomplishment to have written a terse book on American administrative law in 229 pages, the book is remarkable insofar as it employs the comparative method. It has compared for our French professional brethren the American administrative process with the French "droit administratif." *Edward D. Re. N.Y.U. L. Rev. 27:882.*

STREET, HARRY. Governmental liability. Cambridge, England, 1953. 223p.

Professor Street's book contains a very interesting and successful re-examination of the entire problem of governmental liability. For its solution he does not offer any magic formula; instead he comes forward with a number of specific suggestions based on a close analysis of the historical development and the present status of the law in England

and in this country, coupled with an analysis of the legal remedies against the administration which have been devised in Western Europe, especially in France. . . . The book deals effectively with some of the more difficult problems of administrative law. It is clear, concise and convincing. . . . *Angelo P. Sereni. Yale L. J. 63:591.*

SWENSON, RINEHART J. Federal administrative law. New York, 1952. 376p.

. . . readers of a book on federal administrative law might look for a unified and detailed treatment of the Administrative Procedure Act of 1946. It will not be found. . . . The author's implied criticism of judicial review is unfair. At least he should have indicated that much that is favorable can be and has been said about judicial review. . . . What now about the book as a whole? In spite of unevenness, some omissions, and various biases (which may, perhaps, be largely forgiven in so controversial a field) it is believed that this book will have a large value to those who wish to explore, the pros and cons of one of the most important legal and governmental developments of our time. However, neither student nor practitioner should rely on it exclusively. . . . *Charles H. Kinnane. U. of Pa. L. Rev. 101:1095.*

VANDERBILT, ARTHUR T. The doctrine of the separation of powers and its present-day significance. Lincoln, Neb., 1953. 144p.

Their subject is most appropriate for lectures given in honor of America's most noted academic jurist by this country's most distinguished jurist on the Bench, both of whom have throughout their careers been particularly concerned with the field of public law. For the doctrine of the separation of powers, as it is applied in the Federal Constitution, is peculiarly the American contribution to political science. . . . it is our organic instrument alone which has provided for the effective implementation of that doctrine in practice. This is clearly shown from the comparative analysis contained in the first chapter of the book. . . . It is with the present status of the separation of powers provided in 1787 as between States and Nation and within the Federal Government itself that Judge Vanderbilt deals in his second chapter. . . . It is the crucial role of the courts in the functioning of our polity that gives special significance to the third and last chapter of this volume, in which judicial deference as a grave cause of constitutional imbalance is discussed. . . . the matters dealt with in Judge Vanderbilt's lectures constitute the very heart of present-day constitutional law. One need not necessarily agree with the author's viewpoint in order to benefit from his lucid presentation of problems and analysis of possible solutions. *Bernard Schwartz. Conn. B. J. 27:366.*

Casebooks

DAVIS, KENNETH C. Cases on administrative law. Boston, 1951. 1031p.

DAVISON, J. FORRESTER and GRUNDSTEIN, NATHAN D. Cases and readings on administrative law. Indianapolis, 1952. 777p.

GELLHORN, WALTER and BYSE, CLARK. Administrative law: cases and comments. Brooklyn, N.Y., 1954. 1273p.

JAFFE, LOUIS L. Administrative law: cases and materials. New York, 1953. 647p.

FRENCH ADMINISTRATIVE LAW

This bibliographical note on French administrative law is taken from Schwartz, *French Administrative Law and the Common-Law World* 339-41 (1954):

I. The Founders

The doctrinal founders of modern French administrative law began to publish their works as early as the Second Empire. The first writers sought merely to state the basic principles without any real attempt at combining the various aspects of the subject into a coherent whole. Thus, one of the important early texts, Dufour, *Droit administratif appliqué*, 7 vols. (1854-57), treated the different headings in alphabetical order, much as the legal encyclopedias do with which the Anglo-American lawyer is familiar. As time went on, however, treatises appeared that strove to classify the principles of the *droit administratif* in logical order. The efforts of their authors laid the foundation for the modern French system. Of these early works three are of particular interest:

Aucoc, *Conférences de droit administratif*, 3 vols. (1869-76);

Ducrocq, *Traité de droit administratif*, 7 vols. (1897-1905);

Laferrière, *Traité de la juridiction administrative et des recours contentieux*, 2 vols. (2d ed. 1888, 1896).

The now classic treatise of Laferrière is especially important. Its author was vice-president of the Council of State during one of the important periods of its development, and his study represented the first successful attempt at synthesis and systematization of the principles worked out by the administrative courts. Laferrière, more than anyone else, can be considered the founder of the modern *droit administratif*.

II. The Classics

The period after 1900 was one of the most important in the history of the *droit administratif*. The Council of State, the Supreme Court in the French system of administrative law, was consolidating its newly won position as a true court and was in process of formulating the basic principles that have dominated its jurisprudence ever since. Leading case followed leading case as the French tribunal progressively carried to completion its task of constructing a sound system of administrative law. And doctrinal writers were not wanting to classify and comment on the Council's work. In this period, indeed, were published the classic treatises of the modern *droit administratif*.

The writing of the period is dominated by the works of Maurice Hauriou, dean of the Law Faculty of the University of Toulouse. His *Précis de droit administratif* (12th ed. 1933) is invaluable to anyone interested in the French system. His writings are noted for a clarity and an ease of expression that make them particularly useful to an outside observer. In addition to his classic treatise Hauriou is important for his Notes on important cases, which appeared at frequent intervals during his life in the *Recueil Sirey*. These Notes were arranged in logical order by his son and published under the title *La Jurisprudence administrative de 1892 à 1929*, 3 vols. (1929). These volumes, which are still in print, enable a student to have at his command all the important cases in a key period of the *droit administratif*. In addition to Hauriou's comments they contain the text of the decisions commented on and, in many cases, the conclusions of the government commissioners.

Léon Duguit, dean of the Law Faculty of the University of Bordeaux, was, next to Hauriou, the outstanding French public lawyer of this period. Though his main concern was not with

administrative law as such, there is much in his writings of interest to a student of the subject, particularly in the field of State liability. His principal work is his *Traité de droit constitutionnel*, 5 vols. (3d ed. 1925-28).

In addition to Hauriou and Duguit the following treatises should be cited:

Berthélemy, *Traité élémentaire de droit administratif* (13th ed. 1933);

Bonnard, *Précis de droit administratif* (4th ed. 1943);

Jèze, *Principes généraux de droit administratif*, 6 vols. (3d ed., 1926-36).

There are also useful texts on specific aspects of administrative law:

Alibert, *Le Contrôle juridictionnel de l'administration* (1926). The leading work on review of administrative action.

Appleton, *Traité élémentaire de contentieux administratif* (1927, supp. 1936).

Duez, *Les Actes de gouvernement* (1935).

Duez, *La Responsabilité de la puissance publique* (2d ed. 1938).

III. Contemporary Works

The outstanding present-day text of French administrative law is the *Traité élémentaire de droit administratif* (6th ed. 1951, supp. 1952) by Marcel Waline, Professor on the Law Faculty of the University of Paris. A worthy successor to the work of Hauriou, this treatise has already become a classic.

Other useful contemporary works are:

Duez and Debyre, *Traité de droit administratif* (1952);

De Laubadère, *Traité élémentaire de droit administratif* (1953); *Manuel de droit administratif* (3d ed. 1951);

Rolland, *Précis de droit administratif* (10th ed. 1952).

On the subject of judicial review the most valuable work is Odent, *Cours de contentieux administratif* (1949-50). Its author, now a counselor of state, was senior government commissioner in the Council of State at the time of its publication.

Since 1947 the Council of State has published annually its *Études et documents*. They contain articles on important aspects of administrative law by its members and distinguished outsiders, as well as statistics, available in convenient form for the first time, on the Council's work. Also worthy of note among Council of State publications is its *Livre Jubilaire publié pour commémorer son cent cinquantième anniversaire* (1952), an impressive tome containing contributions from French and foreign administrative lawyers, published on the occasion of the one hundred and fiftieth anniversary of the Council.

Articles and comments of value are also to be found in the *Revue du droit public*, the leading law review on French public law.

IV. The Case Law

As a system primarily judge-made, the *droit administratif*, like the law made by Anglo-American courts, has its primary source in the case law. The decisions of the Council of State are published in the *Recueil des arrêts du Conseil d'État statuant au contentieux*, usually called the *Recueil Lebon*. It is unfortunately about one year late in publishing current decisions. The more important administrative-law cases are printed and commented on in the two great unofficial law reports, the *Recueil Sirey* and the *Recueil Dalloz* and in some other unofficial reports as well as in the *Revue du droit public*. To one interested in research in the French case law Hauriou, *La Jurisprudence administrative de 1892 à 1929*, discussed above, is invaluable. It contains the leading cases for that period. There being nothing like it for the period since 1929, the researcher must himself seek out the important cases from the reports referred to above.

HOOVER COMMISSION TASK FORCE

The Hoover Commission Task Force on Legal Services and Procedure, which was set up in January, has subdivided itself into five Task Force Groups to work on specific phases of the over-all problem with which the Task Force is concerned. The membership of these five Groups, together with the special fields of activity, assigned are:

Group 1—Organizational Structure of Legal Services and Personnel.

Ross L. Malone, Chairman,
E. P. Tuttle
Edward L. Wright

Group 2—Procedure and Separation of Powers (Under Administrative Procedure Act).

Dean Albert J. Harno, Chairman,
Carl McFarland
George Roberts, consultant.

Group 3—Procedure and Separation of Powers (Not Under Administrative Procedure Act).

Dean E. Blythe Stason, Chairman,
Herbert W. Clark
Judge Harold R. Medina
Chief Justice Arthur T. Vanderbilt,
consultant.

Group 4—Admission to Practice before Government Agencies.

Reginald Heber Smith, Chairman,
David F. Maxwell
James M. Landis

Group 5—Legal Services within Armed Forces.

Justice David M. Peck, Chairman,
Cody Fowler
James M. Douglas

The Task Force has chosen Reginald Heber Smith as its vice-chairman, Ross L. Malone as its secretary, and Henry M. Shine, Jr., assistant secretary. Professor Whitney R. Harris, Southern Methodist University School of Law, has been named Executive Director of the Task Force and Courts Oulahan has been designated Research Director.

Professor Bernard Schwartz, the Editor of this Bulletin, has been appointed Consultant to Task Group 2 and Professor A. James Casner, Harvard Law School, Consultant to Task Group 4.

Notice of Request for Written Statements

The Task Force on Legal Services and Procedure invites interested persons and groups to submit written statements relative to the study now being conducted by the Task Force.

Task Force Authority. Pursuant to Public Law 108, c. 184, 67 Stat. 142, approved July 10, 1953, the Task Force on Legal Services and Procedure, on behalf of the Commission, is making a study of legal services within the Executive Branch of the Government, administrative procedure, and practice before Executive Departments and independent establishments.

Task Force Agenda. The Task Force invites statements, recommendations, and suggestions with respect to the following:

1. Organization of legal services and staffs within Executive Branch.
2. Recruitment, retention, promotion, retirement, and separation from service of Government attorneys, excluding security cases.

3. Professional standards of Government attorneys, including conflict of interest statutes.
4. Division of legal functions among the several departments and independent establishments of the Executive Branch, and conflicts and duplications therein.
5. Legal procedures of agencies and agency functions under Administrative Procedure Act of 1946, 60 Stat. 237, 5 U.S.C., § 1001 et seq.
- *6. Legal procedures of agencies and agency functions not under Administrative Procedure Act of 1946.
7. Separation of powers within Executive Departments and independent establishments.
8. Status and functions of Federal trial examiners, hearing officers, and similar officials.
9. Qualifications for practice before Executive departments and independent establishments, including admission, suspension, and removal of practitioners.
10. Military and civilian legal services within Department of Defense.

Form. Statements submitted should be printed, mimeographed, or otherwise reproduced clearly and legibly on only one side of strong, durable, letter-size paper, with a left-hand margin 1-1/2 inches wide. Printed statements should be in clear type, never smaller than small pica or 11-point type, adequately leaded. Typed statements should be double-spaced, with quotations indented and single-spaced.

Filing. A minimum of ten copies of each statement, twenty-five copies if possible, should be filed with the Task Force Staff Director, Mr. Whitney R. Harris, Room

3826, GAO Building, 5th and G Streets, N. W., Washington 25, D. C., within thirty days after publication of this notice in the Federal Register.

Questionnaires. The Task Force has addressed questionnaires on legal services, administrative procedure, and practice to the departments and independent establishments of the Executive Branch. These questionnaires may be of use in preparing statements, recommendations, and suggestions for the Task Force. Copies of these questionnaires may be inspected at the Task Force office at the address given above. A limited number are available for distribution upon request.

/s/ James M. Douglas
James M. Douglas
Task Force Chairman

ADMINISTRATIVE PRACTICE QUESTIONNAIRE

The Task Groups referred to above have been preparing questionnaires for submission to the different agencies in the Federal Government. It is upon the information received in answer to these questionnaires that the Task Groups and the Task Force itself will base much of their reports, which are to be submitted later in the year.

The appropriate Task Groups have already prepared and sent out to the agencies questionnaires on practice before the agencies and legal personnel and services. In preparation is a detailed questionnaire on administrative procedure. It is felt that publication of the questionnaire on practice in this issue of the Bulletin is appropriate.

This is true both because of the interest this Section has always had in the subject of agency practice and because publication of an illustrative Task Group questionnaire will enable the members of this Section to obtain some idea of how the new Hoover Commission Task Force is going about its work. The Editor feels certain that any views expressed by Section members with regard to the questionnaire or the work of the Task Force will be most cordially received. Such views should be addressed to Mr. Courts Oulahan, Research Director, Room 3826, GAO Building, Washington, D. C.

Questionnaire on Admission to Practice before Executive Departments and Independent Establishments

(The questionnaire is dated March 22, 1954, and submission of completed questionnaires are requested not later than May 1, 1954).

1. Name of your organization and all subdivisions thereof to which attorneys and laymen are admitted to practice.

2. Please attach (a) a copy of your Rules of Practice; and (b) a statement of the present requirements for admission to practice before the organization and the subdivisions thereof listed in question 1 above.
3. Please attach copies of any forms in use for application to admission to practice by (a) attorneys and (b) laymen, particularizing for the organization and the subdivisions thereof listed in question 1. above.
4. Please describe any additional matters which are not covered by submitting a written application for admission to

practice, such as customs, oral and written examinations, investigations, etc., particularizing for the organization and the subdivisions thereof listed in question 1 above.

5. Over the last six years, how many applications for practice have been received, and of these how many have been granted?

Year	Attorney			Laymen		
	Applica- tions	Number Granted	Number Denied	Applica- tions	Number Granted	Number Denied
1948	-----	-----	-----	-----	-----	-----
1949	-----	-----	-----	-----	-----	-----
1950	-----	-----	-----	-----	-----	-----
1951	-----	-----	-----	-----	-----	-----
1952	-----	-----	-----	-----	-----	-----
1953	-----	-----	-----	-----	-----	-----

6. Please list the total number of practitioners who were or had been admitted and were entitled to practice before your agency during each of the last six years.

Year	Attorneys	Laymen	Total
1948	-----	-----	-----
1949	-----	-----	-----
1950	-----	-----	-----
1951	-----	-----	-----
1952	-----	-----	-----
1953	-----	-----	-----

7. Does there exist a specialized bar or other association to which practitioners (a) are required to belong or (b) may belong, particularizing for the organization and the subdivisions thereof listed in question 1 above?
8. Please state the principal reasons for the denial of (a) attorney applications and (b) laymen applications.
9. Please describe the procedure for processing applications for admission by (a) attorneys and (b) laymen.
10. In what general proportion are parties other than the Federal Government represented before your organization by:

- (a) Attorneys in formal adjudicatory and rule-making proceedings (—%) and other proceedings and informal representation (—%)?
- (b) Laymen in formal adjudicatory and rule-making proceedings (—%) and other proceedings and informal representation (—%)?
11. Please attach copies of, or give citations to, administrative decisions and judicial opinions dealing with admission to practice before your organization and the subdivisions thereof.
12. Please list the number of disbarment and other disciplinary proceedings initiated during the past six years for:

(a) Attorneys

Year	Total No. Proceedings	Disbarment	Temporary Suspension**	Other Action*
1948	_____	_____	_____	_____
1949	_____	_____	_____	_____
1950	_____	_____	_____	_____
1951	_____	_____	_____	_____
1952	_____	_____	_____	_____
1953	_____	_____	_____	_____

** For what periods?

* Please amplify.

(b) Laymen

Year	Total No. Proceedings	Permanent Suspension	Temporary Suspension**	Other Action*
1948	_____	_____	_____	_____
1949	_____	_____	_____	_____
1950	_____	_____	_____	_____
1951	_____	_____	_____	_____
1952	_____	_____	_____	_____
1953	_____	_____	_____	_____

** For what periods?

* Please amplify.

13. What cooperation, if any, is effected by your organization with non-governmental bar and other professional groups in connection with disciplinary proceedings?
14. Please describe the nature of your disbarment, suspension, and other disciplinary proceedings, with comments on the general conduct of attorney and

laymen practitioners before your organization and any special disciplinary problems.

15. What, if any, general comments or recommendations does your organization have with respect to the subject matter of this questionnaire?

Signature of official authorized
to answer this questionnaire.

Title

Date

MIDWINTER MEETING, 1954

The following recommendations and report submitted on behalf of the Section at the midwinter meeting of the American Bar Association at Atlanta, Georgia:

The Section of Administrative Law recommends that the House of Delegates adopt the following resolutions:

1.—*Federal Hearing Examiners*

WHEREAS, The American Bar Association believes that the fair and efficient hearing and impartial decision of cases of adjudication before Federal administrative agencies can be achieved only if hearing officers are afforded maximum assurance that they must and can exercise fully independent judgment in hearing and initially deciding cases; and

WHEREAS, the impartial conduct of cases by Federal hearing officers is not adequately safeguarded against agency influences by the regulations and practices which

have been evolved under Section 11 of the Administrative Procedure Act; and

WHEREAS, the attainment of the fair hearing and impartial decision objectives of the Administrative Procedure Act requires an unmistakably clear legislative mandate for the independent appointment, tenure and compensation of Federal hearing officers;

Now, THEREFORE, BE IT RESOLVED, that the American Bar Association advocates the amendment of Section 11 of the Administrative Procedure Act so as to eliminate the authority of the Civil Service Commission with respect to Federal hearing officers and otherwise to achieve the principles and objectives stated in the premises; and

BE IT FURTHER RESOLVED, that the American Bar Association advocates the independent appointment of Federal hearing officers, whether by an independent Office of Federal Administrative Procedure if such an office is created, by Presidential appointment, or by other appropriate means; and

BE IT FURTHER RESOLVED, that the American Bar Association advocates that any amendment of Section 11 of the Administrative Procedure Act to provide for such independent appointment should contain an appropriate grandfather clause; and

BE IT FURTHER RESOLVED, that the American Bar Association advocates that any such amendment of Section 11 of the Administrative Procedure Act should provide also for independence of Federal hearing officer personnel from any agency control impairing the attainment of fair hearing and impartial decision objectives; and

BE IT FURTHER RESOLVED, that the American Bar Association welcomes the contributions presently being made to the solution of these problems by the President's Conference on Administrative Procedure and the Hoover Commission; and

BE IT FURTHER RESOLVED, that the Section of Administrative Law is hereby authorized and directed to represent the American Bar Association before appropriate committees of Congress, as well as before the President's Conference on Administrative Procedure and its committees and the Hoover Commission to the extent that such participation is deemed appropriate in pursuance of the foregoing objectives.

2.—Judicial Review of Deportation Orders.

BE IT RESOLVED that the American Bar Association approves in principle the proposal by the Department of Justice for legislation to make deportation orders subject to review by the courts as soon as such orders are administratively final, so that aliens are not required to wait until they are in custody before challenging such orders in the courts, and authorizes the Section of Administrative Law to appear before the committees of Congress and to take such other steps as it deems appropriate to support the proposal. [Both of these resolutions were adopted by the House of Delegates on March 9, 1954].

REPORT

1.—*Federal Hearing Examiners.*—Under Section 11 of the Administrative Procedure Act (June 11, 1946), there was set up a provision for hearing examiners to be ap-

pointed under the civil-service laws, who were to be qualified and competent, who were to be assigned to cases in rotation so far as practicable, who were to be assigned no duties inconsistent with their duties and responsibilities as hearing examiners, who were to be removable only under certain restrictions and assured of their compensation independent of the recommendations of their agencies. Other provisions of the law were adopted to insure the independence and fairness of these examiners.

The matter of selection, appointment, tenure and control of hearing examiners has been studied by this Section almost continually since the adoption of the Administrative Procedure Act. The view of the committees studying the matter usually has been that the Civil Service Commission has not lived up to the high hopes held for it at the time of the adoption of the Act.

Ultimately, by reason of the action of the Civil Service Commission in adopting regulations regarded by many as opposed to the spirit and letter of the APA, suit was instituted by the Conference of Federal Trial Examiners to declare the regulations invalid and enjoin their enforcement. These regulations established different grades of examiners within the same agency, permitting (as it was contended) assignment of particular examiners to particular cases based on supposed relative difficulty of the case and the grade of the desired examiner, and otherwise permitted agency control over the examiner. Although the position of the Conference was sustained in the U.S. District Court (104 F.Supp. 734) and the U.S. Court of Appeals for the Dist. Col. Circuit (202 F.2d 312), the Supreme Court

reversed, sustaining the regulations as within the power of the Commission. *Ramspeck v. Federal Trial Exmrs. Conference*, 345 U.S. 128 (Justices Black, Douglas and Frankfurter dissenting).

No group within the Section (nor, so far as we have been informed, within the entire Association) has concluded in any of the many studies undertaken that the performance of the Civil Service Commission under the APA respecting hearing examiners has been satisfactory. Its history and orientation have developed fixed attitudes respecting the traditional career service which do not permit the Commission personnel to adapt to a situation involving hearing examiners, whose function is judicial rather than clerical or executive.

At the Boston meeting of the Section, in August 1953, there was a formal debate upon the merits of Presidential appointment as an alternative to Civil Service Commission administration. There were extensive presentations from the floor following the debate. At length, the Section directed its Council at the 1954 midyear meeting to state the position of the Section, following reports which it directed from three of the Committees of the Section (the Committee on Federal Trial Examiners, Committee on Administrative Procedure Act, and Committee on Improvement of Administrative Procedures), and to seek approval thereof by the House of Delegates.

Extensive reports have been received from two of those committees, and a somewhat less extensive report from the third. In the light of the consideration of hearing-examiner problems by the President's Conference on Administrative Procedure, which

has asked the view of this Association, and by the Hoover Commission, the Council did not take a position with regard to either an independent Office of Administrative Procedure (studied by the President's Conference) or Presidential appointment (discussed at length at the Boston meeting), but, as the resolution states, favors elimination of the authority of the Civil Service Commission, independent appointment of hearing examiners (with an appropriate grandfather clause to preserve the status of those examiners lawfully engaged pursuant to the APA), and independence of hearing examiners from agency control impairing fair hearings and impartial decisions. The resolution was adopted without dissent.

2.—*Judicial Review of Deportation Orders.*—The Section of Administrative Law urges the House of Delegates to approve a resolution in support of proposed legislation for improving the present procedure for review of deportation orders. In the past, deportation orders have been reviewable only in habeas corpus after the alien was taken into custody. At the present time there is uncertainty as to whether an alternative remedy by way of declaratory judgment is available; the District of Columbia Court of Appeals has held that it is in a decision affirmed by an equally divided Supreme Court (*Rubinstein v. Brownell*, 206 F. 2d 449, affirmed, 346 U.S. 929). Habeas corpus is an unsatisfactory remedy to both the alien and the Government in that it is not available to the alien until he is taken into custody for purposes of deportation. On the other hand, the ordinary declaratory judgment procedure has the disadvantages of permitting long delays and

repetitious litigation before aliens whose cases may have no merit whatsoever may be deported.

The object of the proposed legislation is to combine the advantages of ordinary judicial review with the expedition presently available in habeas corpus. The proposed bill would permit an alien subject to a final order of deportation and not in custody to obtain judicial review of such order by filing a petition for review in a United States District Court. The procedure and scope of review would be substantially that accorded to other administrative orders under the Administrative Procedure Act, except that for claims of citizenship there would, as at present, be an independent judicial determination. If the alien is already in custody, however, habeas corpus remains the exclusive remedy. The only limitation upon the availability of habeas corpus would occur if an alien has previously elected to follow the proposed statutory procedure. The proposed legislation would not permit the alien to use both remedies unless the court found that the statutory review procedure was inadequate or that the application for a writ of habeas corpus is based upon grounds which could not have been presented in the prior proceeding. The validity of such a reasonable means of preventing repetitious litigation is established by *United States v. Hayman*, 342 U.S. 205.

The proposal would also require that petitions for review be expedited in the same manner as habeas corpus proceedings, which means that they would have priority on the court calendars. The legislation also would provide that the Immigration and Naturalization Service be the respondent in such

statutory review proceedings, thereby eliminating the frustrating problem of abatement and substitution which may occur when there is a change in the identity of the individual officer named as respondent.

The proposed legislation has been initiated by the Department of Justice through the Office of the Solicitor General and the Immigration and Naturalization Service and is a part of the Attorney General's present legislative program. An early draft of the proposal was submitted to representatives of the Section of Administrative Law, all of whose suggestions have been incorporated in the Department's final draft, a copy of which is attached.

At the Boston meeting of the Section, the principle of the legislation was approved subject to further study by the appropriate committee of the section and final adoption of the section position by the Council. There is no dissent within the Section from the principle of the proposal, and the action of the Council in proposing the resolution is unanimous.

3.—*Tax Section Views on H.R. 485, 83rd Cong.*—At the Boston meeting, August 1953, the Section of Taxation proposed that the House of Delegates adopt a resolution opposing H.R. 485, 83d Cong., providing for automatic admission to practice before federal agencies of lawyers admitted to practice in any state and in good standing. Upon motion of this Section, the matter was referred to this Section and to the Committee on Unauthorized Practice of the Law, which over the years have jointly been advancing the views of the Association in support of the Administrative Practitioners Act.

One of the features of the proposed Administrative Practitioners Act has been the automatic admission of lawyers. We understand from the Section of Taxation, however, that it is not the automatic admission to practice before all agencies to which they are opposed, but the failure of this particular bill (which is not co-extensive with the Administrative Practitioners Act) to provide for censure, suspension or disbarment of attorneys appearing before the department, in cases of misconduct.

While this Section believes that the Administrative Practitioners Act is the best solution of all these problems relating not only to admission and to censure, suspension or disbarment, but also to problems of lay practice, the Council of the Section, pursuant to authority of the Section at the Boston meeting, at this midwinter meeting adopted the following resolution in deference to the views of the Section of Taxation:

RESOLVED, that the Section of Administrative Law do not oppose the resolution proposed by the Section of Taxation respecting H.R. 485, 83rd Cong., provided its resolution is so amended as specifically to provide that the basis for opposition to that bill is that it would deprive the Treasury Department of the power to censure, suspend or disbar any lawyers practicing before it so long as such lawyers are in good standing in their own state courts.

Respectfully submitted,

John W. Cragun,
*Chairman, Section
of Administrative Law.*

ATLANTA COUNCIL MEETING

The following is a summary, prepared by Patricia H. Collins, the Secretary of the Section, of the meeting of the Section Council at Atlanta on March 6-7, 1954:

1. *Agenda.*—The agenda was distributed and modified in accordance with suggestions made. It was approved as modified.

2. *Clarence A. Miller.*—A resolution to record the sorrow of the Council of the Section of Administrative Law at the loss of Clarence A. Miller by death on November 21, 1953, was called for. The Council directed Ashley Sellers and Patricia Collins to draw a suitable resolution memorializing the life and accomplishments of Clarence A. Miller, such resolution to be spread upon the minutes of the Council and to be sent to his family and associates.

3. *Handbook.*—Discussion was had of the comparative usefulness of the Section Handbook, prepared by Robert Benjamin, if printed or if issued in mimeographed form. It was suggested that the Handbook will be relied on greatly by committee chairmen in the Section. It was suggested also that it should be distributed widely to other Sections in the Association. Accordingly, it was felt that the cost of printing appeared to be justified and approval was given for an expenditure to cover printing of 500 copies of the Handbook.

4. *Report of Committee on Organization and Bylaws.*—A report of the Committee on Organization and Bylaws, which had been distributed to all members of the Council, was presented by Louisa Wilson,

Chairman of the Committee. The Report recommended three resolutions for adoption by the Council. The *first* of these resolutions was the following:

RESOLVED, (a) that the Committee on Government Contracts be abolished.

(b) that the following new committees on particular federal activities be established within the Section:

Committee on Public Contracts

Committee on Termination of Federal and State Public Contracts (special)

(c) That the following new committees on particular legislation or proposals be established within the Section:

Committee on Good Faith Reliance Act (special)

Committee on Judicial Review

Committee on Pre-Trial Procedure (special)

(d) That the various committees of the Section shall perform functions as fully described in the committee report under the following general headings:

Committees on Particular Federal Agencies or Activities

Committees on Particular Legislation or Proposals

General and Miscellaneous Committees

Action on *first* resolution:

A resolution was approved adopting (a).
A resolution was approved adopting (b).
A resolution was approved adopting (c), with the deletion of the recommendation for a Committee on Pre-Trial Procedure.
A resolution was approved adopting (d) with editorial changes, such editorial changes to be left to the discretion of the Committee Chairman.

A *second* resolution recommended by the Committee was as follows:

RESOLVED, (1) That in all instances in which the committees of the Section are abolished or new committees of the Section are established, the facts with respect thereto shall be made known to the Committee on Organization and Bylaws of the Section, and that Committee shall keep a record of the history of the organization of the Section.

(2) That the Committee on Organization and Bylaws shall present a comprehensive report on the organization of the Section to the Council, with recommendations as to changes, if they are desirable, at the Midwinter meeting of the Council, at least once every two years, beginning in 1954.

Action on *second* resolution:

A motion adopting the second resolution was unanimously carried.

The Committee's *third* resolution was as follows:

RESOLVED, that the Committee on Code of Conduct of Government Employees shall, in connection with its report for presentation at the fall 1954 meeting of the Section, include a recommendation (with appropriate resolutions to be presented to the House of Delegates) to transfer the activities with which such Committee is concerned to some other Section or Committee of the Association.

Discussion followed the motion to approve the third resolution. The sense of the Council was that action should be deferred on the resolution in view of the likelihood that the report being prepared by John A. McIntire, Chairman of the Code of Conduct of Government Employees Committee of the Section, may cast further light on the subject.

Action on *third* resolution:

A motion to defer action on the third resolution was adopted.

5. *Section Delegate to be member of Council.*—The proposal that the Section delegate be made a member of the Council by appropriate amendment of the Section Bylaws was approved as a matter to be studied and reported on by the Organization and Bylaws Committee at the annual meeting for submission to the House of Delegates. The resolution was accepted by the Chairman as a supplemental resolution in the report of the Committee on Organization and Bylaws.

6. *Authority of Council to State a position on emergency matters.*—Following the Section delegate discussion, suggestion was made that the Bylaws of the Section are deficient in that there is no provision for action by the Council between meetings to state a position when an emergency matter arises. It was suggested that Article VI, section 1, of the Bylaws, needs to be amended to that effect. In view of that a motion was carried directing the Organization and Bylaws Committee to study and make a report to the next annual meeting on the need for a revision in the Bylaws and to incorporate the foregoing in a proposed bylaw if it is felt that the bylaws should be thus revised.

Meanwhile, the Council approved in principal the power of the Council to act in emergency matters subject to a requirement that the Council report back at the next annual meeting of the Section concerning any matter which has called for emergency action.

7. *The Administrative Court Bill.* Robert Benjamin reported with reference to the Administrative Court Bill, that he had conferred with the Section on Judicial Administration and had been advised that the Section is in agreement with the resolution on the bill which was adopted by this Section at the Annual Meeting in Boston. He also reported that he had conferred with the Standing Committee on Jurisprudence and Law Reform and learned that the Committee was likewise in agreement with our position and had so reported to the House of Delegates.

Henry Shine, a representative of the Hoover Commission Task Force on Legal Operations, who was present at the meeting, stated that the Task Force would like to have a statement of the Section's views on S. 14. No action was taken with reference to any further position on the matter.

8. *Presidential Appointment of Hearing Examiners—S. 1708.*—The Chairman called for reports by the three committees which were directed at the annual meeting in Boston to report to the Council at the mid-winter meeting with reference to the position to be taken by the Section on S. 1708.

Rufus Poole, Chairman of the National Committee, presented the report of the Committee on Federal Trial Examiners in the absence of its Chairman, Robert F. Jones. [This report is reprinted *infra*].

The Jones' report submitted for approval by the Section the following resolution:

WHEREAS, it is desirable to establish and maintain a competent, impartial corps of Federal Trial Examiners, independent, directly or indirectly, of agency control or sanctions, and

WHEREAS, the system of appointment and tenure of the Federal Judiciary commends itself to application in the appointment and tenure of Federal Trial Examiners, and

WHEREAS, increase in salary of Federal Trial Examiners, life tenure during good behavior, and the concept of "administrative judges" will add materially to the stature of Examiners and the conduct of administrative law.

THEREFORE, BE IT RESOLVED, that the American Bar Association shall support the legislative proposal S. 1708 by Senator McCarran of Nevada to amend section 11 of the Administrative Procedure Act so as to achieve the objective stated above; and

BE IT FURTHER RESOLVED that the Section of Administrative Law is hereby authorized and directed to represent the American Bar Association before appropriate committees of Congress, as well as before the President's Conference on Administrative Procedure and its committee to the extent that such participation is deemed appropriate.

Following the submission of the Jones resolution, the Chairman called for the report of the Administrative Procedure Act Committee, also given responsibility for reporting to the Council. [This report is also reprinted *infra*]. The resolution of that committee, then submitted for approval, is as follows:

RESOLVED, that the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

WHEREAS, the American Bar Association believes that the fair and efficient hearing and impartial decision of cases of adjudication before Federal administrative agencies can be achieved

only if hearing officers are afforded maximum assurance that they must and can exercise fully independent judgment in hearing and initially deciding cases; and

WHEREAS, the impartial conduct of cases by Federal hearing officers is not adequately safeguarded against agency influences by the regulations and practices which have been evolved under Section 11 of the Administrative Procedure Act; and

WHEREAS, the attainment of the fair hearing and impartial decision objectives of the Administrative Procedure Act requires an unmistakably clear legislative mandate for the independent appointment, tenure and compensation of Federal hearing officers;

NOW THEREFORE, be it resolved that the American Bar Association urges the amendment of Section 11 of the Administrative Procedure Act so as to achieve the principles and objectives stated in the premises; and

BE IT FURTHER RESOLVED, that the American Bar Association endorses S. 1708 as a Bill to partially achieve these principles and objectives, without exclusively supporting at this time the appointment of Federal hearing examiners by the President of the United States by and with the advice and consent of the Senate; and

BE IT FURTHER RESOLVED, that the American Bar Association endorses in principle the creation of an independent Office of Federal Administrative Procedure whose function shall include hearing examiner administrative responsibilities now fixed by Section 11 of the Administrative Procedure Act; and

BE IT FURTHER RESOLVED, that the Section of Administrative Law is hereby authorized and directed to rep-

resent the American Bar Association before appropriate committees of Congress, as well as before the President's Conference on Administrative Procedure and its committees to the extent that such participation is deemed appropriate.

The Chairman then called for the report of the Committee on Improvement of Administrative Procedures. A proposal for adoption in the event the Council decided to endorse S. 1708 was submitted by Chairman Ralph Fuchs for action by the Council. The text of the proposal is as follows:

The undersigned members of the Council of the Section of Administrative Law are unable to concur in the Council's action in recommending to the House of Delegates, on behalf of the Section, that the American Bar Association endorse the enactment of S. 1708, 83rd Congress, for the amendment of Section 11 of the Administrative Procedure Act. We believe this recommendation to be unwise for two reasons: (1) it fails to take account of the intensive consideration of problems raised by Section 11 of the Administrative Procedure Act which is now going forward in the President's Conference on Administrative Procedure and (2) it contains a confusing qualification, "without exclusively supporting at this time the appointment of Federal hearing examiners by the President of the United States by and with the advice and consent of the Senate", which in our opinion renders the recommendation unsuitable for adoption by the House of Delegates.

Through its Committee on Hearing Officers, the President's Conference on Administrative Procedure is not simply engaged in internal deliberation upon the solution to Section 11 problems; it is endeavoring to elicit and take account of widespread opinions on this subject, especially from members of the bar. The

Conference has been officially created to bring forth its recommendations. Its creation was brought about, in part, by the strenuous efforts of this Section and of the Association. To endeavor now to prejudice one of the most important issues the Conference has before it would seem to us to be singularly inappropriate; and this is particularly true in light of the Conference's request for the views of members of the Association. These should be considered on their merits, without being overborne by Association action. There are no elements of emergency surrounding the hearing officer problem at this time that seem to call for action in the face of these considerations.

All of the provisions of S. 1708 are geared to its provision for appointment of hearing officers by the President with the advice and consent of the Senate. To endorse the bill "without exclusively supporting" this key provision is to take a confusing stand. We do not think the American Bar Association should be placed in this position. When the President's Conference has reported, it should be possible for the Association to take a clear-cut position. We urge that the Association's action await the time when it can do so.

There are many members of the Section and of the Association who believe, as at present advised, that a career system for hearing officers, administered by the Civil Service Commission or an independent Office of Administrative Procedure, is preferable to the more rigid and uniform plan which is proposed in S. 1708 and that such a system can be made consistent with the objectives, to which we all adhere, of genuine independence of hearing officers in the performance of their functions. The report of the President's Conference on Administrative Procedure should do much to cast additional light upon the solution to

these questions. If that report is awaited, there is great likelihood that the Association will be able to take a position which will be representative of a more unified judgment of the membership than exists at present.

The submission of the foregoing reports was followed by a lively discussion in which views were exchanged with respect to the position which the Section should take with respect to S. 1708.

Following the discussion, the following preliminary resolutions were carried:

1. That the Section consider taking a position on hearing examiners.
2. That the Section endorse the principle of the grandfather clause with respect to present hearing examiner incumbents.
3. That the Section express opposition to the present means of appointment and administration by the Civil Service Commission of the hearing examiners.

Following these preliminary resolutions, the final resolution adopted and approved for submission to the House of Delegates was adapted from that proposed by the Committee on the Administrative Procedure Act (see above-quoted).

9. *Eligibility for Administrative Practice*—H. R. 485, 83d Cong.—Pursuant to the direction of the Section at the annual meeting in Boston, the Council took up the consideration of the position to be taken on H. R. 485 of the 83d Congress. The Section of Taxation proposed in Boston that the House of Delegates adopt a resolution opposing the bill. At the request of the Administrative Law Section, however, action by the House was deferred. It was con-

cluded after discussion that while the Section of Administrative Law believes that the proposed Administrative Practitioners Act is the best solution to the problem of practice before administrative agencies, nevertheless in deference to the views of the Section of Taxation on the matter, the following resolution was approved and adopted:

RESOLVED, that the Section of Administrative Law does not oppose the resolution proposed by the Section of Taxation respecting H. R. 485, 83d Congress, provided its resolution is so amended as specifically to provide that the basis for opposition to that bill is that it would deprive the Treasury Department of the power to censure, suspend or disbar any lawyer who is practicing before it so long as such lawyers are in good standing in their own courts.

10. *Judicial Review of Deportation Orders.*—The Chairman reported for the Committee on Immigration that members of the Committee had met with the Acting Solicitor General and that proposed legislation on this subject had been revised to reflect the suggestions of our Section committee and had included the view submitted by our Committee to the effect that the review of deportation orders should be in addition to rather than in lieu of habeas corpus proceedings. The Section unanimously adopted the resolution of the Immigration Committee. The text of the resolution is as follows:

BE IT RESOLVED, that the American Bar Association approves in principle the proposal by the Department of Justice for legislation to make deportation orders subject to review by the courts as soon as such orders are administratively final, so that aliens are not required to

wait until they are in custody before challenging such orders in the courts, and authorizes the Section of Administrative Law to appear before the committees of Congress and to take such other steps as it deems appropriate to support the proposal.

11. *Report of the National Committee.*—Rufus Poole, the Chairman of the Committee, drew attention to the report of the Committee on the status of legislation and which is still pending in the Congress. He also urged upon the Council action to further the passage of S. 18, which has passed the Senate and which is pending in the House.

The Chairman drew attention to the fact that David Reich had appeared before the committees of the Congress in support of legislation to overcome the *Wunderlich* decision.

He also reported communications from the Bureau of Internal Revenue and from the General Accounting Office signifying opposition to the legislative proposal now pending in the Congress with reference to good-faith reliance in government contracts.

12. *Bureau of Budget proposal.*—The Chairman explained the Bureau of the Budget circular which proposed to charge the cost of licensing to persons regulated. He explained that government charges have been announced and asked that the Council give consideration to suggestions for committee personnel in view of the authorization to set up a special committee to consider this subject matter.

13. *The Portland Regional Meeting.*—The Chairman announced that Robert Benjamin is in charge of the Regional Meeting

to be held in Portland, Oregon, May 24-26, 1954. Various suggestions were discussed and emphasis was placed on the need for publicity for any workshop session which might be held at the Portland meeting. Robert Benjamin requested authority from the Council to have extra bulletins printed for the Portland meeting and suggested that extra bulletins are the best means of publicity for the Section and should be considered for distribution at the Annual Meeting in Chicago. It was generally conceded that the expense involved in publication was worthwhile and the Council approved the expenditure of funds for extra copies of the Bulletin. Mr. Benjamin urged members of the Council and through them members of the Section to give him suggestions for anything that might help in making a pitch for the Section at the Regional Meeting in Portland.

14. *Annual Meeting.*—The Chairman announced that tentative plans have been formulated for our Section for the Annual Meeting in Chicago. The headquarters for the Section of Administrative Law will be the Blackstone Hotel. There will be a Council meeting beginning at 10 a.m., on Sunday, August 15, to be reconvened at 2 p.m., the same day. The general meeting of the Section will begin at 1:45 p.m., on Monday, August 16, and will convene again on Tuesday, August 17, at 10 a.m. In addition there will be either a breakfast or a luncheon on Tuesday, depending upon what arrangements can be made and the general session of the Section will convene again at 1:45 p.m., on Tuesday and close that day.

It was suggested that much good would come of an expenditure of the Section for a suite which might provide a meeting

place for members of the Section and would be a drawing card for persons interested in the Section where they could meet and talk with members of the Section.

15. *President's Conference on Administrative Procedure.*—The Section had the pleasure of a visit from George Maurice Morris, Vice-Chairman of the Conference, who explained to the Council the present status of the Conference and the plans for the immediate future. He explained that two substantial items remain unfinished and it is contemplated that the next session of the Conference will hear a report on these items. They are the Hearing Officers Status problem and the Uniform Rules project.

A special vote of thanks was directed to Mr. Morris for his effort in obtaining participation by agencies, associations and individuals outside of the Conference. It was pointed out that in most cases in which government takes action, matters have been accomplished before they are announced outside of the Conference.

16. *Hoover Commission Task Force on Legal Services and Procedure.*—Dean Robert Storey, of the Task Force, paid a visit to the Council and explained something of the make-up of the Task Force and of the procedures under which they are working. He pointed out that the authority of the Hoover Commission now operating is slightly different from the earlier group and that there will be proposals for legislation growing out of the recommendations of this group. The first Hoover Commission did not make recommendations for legislation.

17. *Consideration of Section Budget.*—The Chairman announced that the Section membership is now 1168, which has con-

siderably helped our Budget situation. However, the membership needs to be enlarged. Charles Smoot, Chairman of the Committee on Section Development, urged upon the Council the need for publicity preceding the Annual Meeting to lure new members into the Section.

18. *Adjournment*

EXAMINERS COMMITTEE REPORT

The following report of the Section Committee on Federal Trial Examiners, as well as that of the Administrative Procedure Act Committee, which follows it, on S. 1708, are of great use in enabling the Section members to understand one of the most controversial contemporary administrative-law issues—i.e., the resolution of the federal hearing examiner problem:

COMMITTEE ON FEDERAL TRIAL EXAMINERS

Significant recent developments pertaining to Federal Trial Examiners include:

1. Trial Examiner aspects of the President's Conference on Administrative Procedure.
2. Trends in *de facto* status and function of hearing examiners in conducting and reporting agency cases of adjudication.
3. Decision of the United States Supreme Court in *Federal Trial Examiners Conference v. Ramspeck*, 345 U.S. 128 (March 16, 1953), upholding the validity of the Civil Service Com-

mission regulations governing trial examiners.

4. Introduction of S. 1708 to amend Section 11 of the Administrative Procedure Act providing for Presidential appointment of trial examiners ("administrative judges").

The President's Conference. While this Conference covers matters other than trial examiners and is of primary concern to the Committee on Improvement of Administrative Procedure, the status of trial examiners is one of the important subjects of inquiry. In that connection, of particular interest is the "Report to the Committee on Hearing Officers of the President's Conference 'On Administrative Procedure' submitted by the United States Civil Service Commission in January 1954. This Report is in response to the request of the Committee on Hearing Officers of the President's Conference on Administrative Procedure.

The Report of the Civil Service Commission recites how hearing examiners were appointed prior to the Administrative Procedure Act and how, after the enactment of that Act in June 1946, the Commission established standards for the appointment of hearing examiners. The standards which were finally adopted were set forth in Examining Circular EC-17 which was issued on October 21, 1947. In accordance with those standards, applicants were rated by a Board of Examiners. (While the Report does not deal with the results of those examinations, it is of interest to note here that after examination of the qualifications of the incumbent examiners, when the results were announced in March 1949, 25% of those rated by the Board were found disqualified by it for appointment under the

Procedure Act. The Civil Service Commission rejected the recommendations of the Board of Examiners. The Board resigned and the incumbent examiners, both those found to be qualified by the Board and those who had not, were found qualified by the Commission for appointments under the Procedure Act. Discussion of this point may be found in "Examiners and the APA", in the Administrative Law Bulletin, Vol. 6, No. 1, November, 1953).

The Civil Service Commission's Report to the President's Conference explains how the registers of those eligible for appointment as examiners were established. These were established as the result of the ratings of the examinations of applicants conducted prior to July 1949. Certifications of eligibles are made to agencies in response to agency requests. Generally, the three top names of the register in question (grade level) are certified to the agency. The appointing officer has the right to the choice of one out of the three eligibles but may not pass over a veteran eligible to select a non-veteran eligible without submitting reasons for doing so to the Commission. Selective certification (certification of three highest eligibles with specialized qualifications or experience) may be utilized in some cases if the Commission decides there is a justification for such a departure from the regular order of certification.

The Commission's Report also points out that persons without Civil Service status may not be appointed to hearing examiner positions unless they filed for the examinations above discussed before that examination closed on July 5, 1949. It would seem

then that, for all practical purposes, the register of eligibles was frozen as of 1949. However, under the Veterans Preference Act, a 10-point veteran, with or without status, can file at any time and can also request rerating quarterly.

Transfers, promotions, compensation, removal, reduction in force, and other related problems concerning examiners are likewise discussed in the Commission's Report.

The Report concludes with a section entitled "Views of Past and Future Practices in the Operation of the Hearing Examiner Program" which states:

"While the Hearing Examiner program as presently operated in the Commission undoubtedly provides for the recruitment of well qualified Hearing Examiners and also provides for the selection of the best qualified hearing examiners for promotion, it has not worked out in practice to the complete satisfaction of the Commission. In view of this, the Commission has recently undertaken a survey and study of the entire program, including the questions of standards, classification, promotion, the question of what constitutes good cause for removal, and other points in connection with the entire matter. Inasmuch as the study has not been completed, we are unable at this time to make any statements as to what changes in past practices are contemplated. The responsibility for studying this program and the developing of new policies, procedures and regulations, if any, has been placed under Mr. Warren B. Irons, Director of the Bureau of Departmental Operations. He has recently appointed a member of his staff Mr. Henry W. Rempe who will take charge of the study with relation to the Hearing Examiner program. The Commission will be pleased

to discuss all phases of this program with all interested parties during the course of its study.

It is the desire of the Commission to cooperate fully with all groups and organizations which are interested in the Hearing Examiner program, at the same time the Commission desires to receive the cooperation of such groups and we sincerely hope that a hearing Examiner program which is mutually satisfactory to all parties concerned can be developed in the very near future."

Trends. In addition to the information set forth in the Civil Service Commission Report on Examiners, it is believed certain other facts should be here considered.

There are about 300 Trial Examiners within some 19-21 "agencies" of the Federal Government. There have been no significant changes in numbers, duties or procedures during the past year. There continues to be a five grade spread of trial examiners positions as follows:

GS-11	\$5,940 - \$6,940
GS-12	\$7,040 - \$8,040
GS-13	\$8,360 - \$9,360
GS-14	\$9,600 - \$10,600
GS-15	\$10,800 - \$11,800

There are only two agencies which have examiners in the lowest grade: the Bureau of Indian Affairs and the Interstate Commerce Commission, Motor Carrier Cases. The only grade in which there has been any appointment activity is GS-13. Examiners receive automatic ingrade promotions of \$200 each year and a half. Perhaps the most significant development has been the commencement by the Civil Service Commission of job-classification desk audits. In the three agencies where this work has

been completed, there has resulted a raised classification of the Federal Trade Commission from 14 to 15, of Agriculture from 14 to 15 and of the Coast Guard from 12 to 13. The trend to date has been to increase compensation and consolidate the positions into a single grade.

Of existing trial examiner positions, the most recent increase was the addition of some 67 examiners to adjudicate Motor Carrier Cases under the Interstate Commerce Commission, as a result of the *Riss Case*, 341 U.S. 907. Looking to the future there is pending legislation (S. 18) which would repeal exemptions from the Administrative Procedure Act. There are 12 such exemptions whose repeal would add to the number of agencies subject to the Act, and would in some cases, require appointment of trial examiners under Section 11. Account should also be taken of bills such as S. 106, which became Public Law 108 of the 83rd Congress, establishing a Commission on Organization of the Executive Branch of the Government. This Commission is a successor organization to the first Hoover Commission, with one important distinction. It has the power to inquire into the policy question of whether a particular agency function should be continued or performed. While this Commission is primarily concerned with management and fiscal matters and the organizational structure of agencies, there has been created a task force on legal services which is supplemented by five task groups, two of which are concerned with administrative law, organization and functions as follows: Group 1—Organizational Structure of Legal Services and Personnel; and Group 2—Proced-

ure and Separation of Powers (Under Administrative Procedure Act). From the limited standpoint of agency procedures and trial examiners, there is in prospect double-pronged inquiry—the President's Conference and the Congressional Commission.

A precise list of agencies, consistent with the definition of that term in the Administrative Procedure Act, which utilize section-11 trial examiners, is not in existence. This is due to the fact that "agency" as used in section 2 of the Act embraces any authority, officer or board whether "within another agency or not, which by law has the authority to take final and binding action and with or without appeal to some superior administrative authority." For example, the different divisions of the Interstate Commerce Commission and the Judicial Officers of the Department of Agriculture were considered by Congress to be separate "agencies". A list of section-11 trial examiner agencies is as follows:

I. DEPARTMENTS

1. Agricultural Department
 - a. Secretary of Agriculture
 - b. Judicial Officer
 - c. Production & Marketing Administrator
- "Commerce Department"
(Federal Maritime Board)—See
"Independent Agencies" list.
2. Interior Department
 - a. Secretary
 - b. (Commissioner, Bureau of Indian Affairs)
 - c. (Director, Bureau of Land Management)

3. Labor Department
 - a. Secretary
 - b. Administrator, Wage & Hour, and Public Contracts Division
 - c. (Director, Bureau of Labor Standards)
4. Post Office Department
 - a. Postmaster General
5. Treasury Department
 - a. Alcohol Tax Unit
 - b. Coast Guard
6. Department of Welfare and Education
 - a. Secretary
 - b. (Commissioner, Food & Drug Administration)
 - c. (Commissioner, Social Security Administration)

II. INDEPENDENT AGENCIES

1. Civil Aeronautics Board
2. Civil Service Commission
3. Federal Communications Commission
4. Federal Maritime Board
(This Board is an independent agency with respect to Shipping Act cases and Merchant Marine Act cases. With respect to subsidy cases, the Secretary of Commerce or Maritime Administrator is probably the "agency".)
5. Federal Power Commission
6. Federal Trade Commission
7. Interstate Commerce Commission
8. National Labor Relations Board
9. Securities and Exchange Commission
10. Subversive Activities Control Board
11. Veterans Education Appeals Board

The case adjudication procedures and activities of trial examiners in the better known independent agencies (the CAB, FCC, FPC, FTC, ICC and NLRB), are matters concerning which members of the Section are well informed. With respect to the various agencies within departments and other lesser-known independent agencies, there follows a summary tabulation indicating generally their activities and procedures. This tabulation is not intended to be definitive or absolutely authentic in any particular detail:

I. AGENCIES WITHIN DEPARTMENTS

Agriculture Department

This agency has five examiners, all of one grade, who have been upgraded to the top GS-15. They form a pool of hearing officers for two or possibly three agencies in handling cases under five or more separate statutes. Principal statutes are Marketing Agreement Act, Packers and Stockyards Act, and Commodity Exchange Act. Others include the licensing of warehouses and even includes perishable products. As to some matters, the Secretary is the agency. The Judicial Officer of the Department is the agency as to cases under the Schwellenbach Act. Some orders are issued by the Production and Marketing Administrator. Cases are assigned by the Chief Hearing Examiner. The presiding examiner issues a preliminary decision.

Interior Department

This department has nine examiners in Indian cases and one examiner in Land Management cases. The Indian cases are

those involving probate of wills. The other class of cases are licenses under the Taylor-Grazing Act. Actually these cases are appeals from the denial of licenses. The Secretary is the agency as to these matters. The examiner decisions, as a practical matter in most cases, are final.

Labor Department

The Labor Department has two hearing examiners. These cases involve Walsh-Healy Act complaints under government supply contracts, wage orders under the Fair Labor Standards Act (at least with regard to Puerto Rico), and wage orders under the Davis-Bacon Act in government construction contracts. (The Fullbright amendment placed Walsh-Healy complaint cases under the Administrative Procedure Act). With regard to these cases, the examiner's decision is final except for possible review by the Secretary. In the other cases—which are more in the order of rule making or investigations—the record is certified to the administrator for issuance of an order.

Post Office Department

The Post Office Department has four trial examiners authorized. They handle principally Fraud-Order cases. During the past year, for internal or other reasons, there has been a marked reduction in the number of these cases. The Postmaster General is the agency. The practice is to issue initial decisions.

Treasury Department

Within the Treasury Department the Alcohol Tax Unit has three trial examiners and the Coast Guard has fourteen trial ex-

aminers. They are separate agencies and dockets. The Alcohol Tax Unit is self-explanatory. Coast Guard cases concern negligence proceedings in the Admiralty and Maritime field, including enforcement proceedings. These cases involve merchant vessels, collisions and the conduct of masters and seamen. Such cases commence by orders suspending or revoking required documents. Contested cases, which are numerous, are tried before hearing examiners. The existing system was largely reorganized and established in November of 1948 as a result of an intent to comply with the Administrative Procedure Act. The trial examiner issues a decision which is final except for right of review. The agency is the Commandant and the chief hearing examiner participates in the review procedure.

Department of Welfare and Education

This, the newest department, has two examiner positions on Food and Drug matters and eighteen examiners on Social Security Act cases. Presumably, the Secretary is the agency. The Food and Drug cases may involve standards of identity and food quality and slack-full cases. Food and Drug and Cosmetics Act cases and, possibly, denials of applications involving new drugs and other miscellaneous matters, may be subject to examiner hearings. Most of the cases are in the nature of rule-making proceedings. The trial examiner merely certifies the record. The staff issues a tentative order on the record. Exceptions may be filed. The final order is issued in the name of the Secretary. The Social Security Act cases involve claims for lump sums or monthly benefit payments. These cases arise principally on disallowance of claims. The

examiner's decision is essentially final, subject to review. There is an office of appeals counsel.

II. INDEPENDENT AGENCIES

Civil Service Commission

This agency has one trial examiner who handles Hatch Act cases. The examiner issues a recommended decision.

Federal Maritime Board

The Maritime Board is the regulatory agency of the Maritime Administration. The Chairman of the Board is the same person as the Maritime Administrator, who serves to minimize the differences between the Board, which is a regulatory agency, and the Administrator. It has five hearing examiners. Cases arise under the Shipping Act, Merchant Marine Act, and (subsidy cases) under Public Law 591. These are principally rate regulation cases. The remainder involve the chartering of vessels, under certain statutory conditions, and the allowance of subsidies, which have an aspect of competitor interest. There are also minimum wage cases. The Board is the agency and is independent with respect to regulatory matters. However, in subsidy cases, the Administrator or the Secretary of Commerce appears to be the agency. The examiner issues recommended decisions.

Securities Exchange Commission

This agency has four hearing examiner positions, two of which are active (the other two being "on loan"). Cases handled arise under the Securities Act, the Exchange Act, and the Public Utilities Act.

The examiners issue recommended decisions. The Commission is the Agency. The submission of recommended decisions to the Commission is associated with a study prepared by an agency Opinion Division.

Subversive Activities Control Board

This agency has eight hearing examiner positions allotted. None are filled. The system is expected to be organized during August of 1953. This agency will handle cases under the Internal Security Act.

Veterans Education Appeals Board

This agency has three hearing examiners, one on loan from the Federal Trade Commission and two on loan from the Securities Exchange Commission. Cases involve rates of tuition as to World War II veterans and training allowances under Public Law 610. Examiners issue temporary decisions. The Board is the agency. The activity of this agency will rapidly diminish.

* * * *

From the rather limited information which your committee has been able to obtain, the most glaring fact is the wide variance among agencies in the matters of assigning, handling and reporting cases. They differ as to whether there is or is not a chief trial examiner, and whether he does or does not assign cases. There is the widest possible practice in the matter of examiner reports. In some cases, the trial examiner merely certifies the record to the agency for decision. In such cases, the function performed has been likened to that of a glorified Notary Public. To the other extreme, in a considerable number of agencies, the examiner actually makes the in-

itial decision. As a practical matter, in some agencies, this is tantamount to a final decision, subject to agency review. In a large number of agencies, the practice of submitting only recommended decisions still prevails. There are many variations on this procedure, including for example, the screening of recommended decisions by agency staff personnel who had no responsibility for the actual conduct of the hearings. To what extent the de facto situation as to these matters differs today from that which obtained prior to 1947, is difficult to state, and in some cases may be difficult to perceive. In several noteworthy instances, however, agencies have endeavored to comply with the letter and the spirit of the Administrative Procedure Act. There are recent indications of a slow trend in this direction.

There are some instances where trial examiners are used for proceedings other than cases of adjudication—such as rule-making proceedings and other matters probably not subject to Section 5. In the over-all, across-the-board situation, most agency cases are actually handled by trial examiners. Notwithstanding the uncertainties which have prevailed, there has evolved an increasing acceptance of the status and function of Hearing Examiners within the agency process. In actual fact, the large number of agency cases are disposed of at the trial examiner level.

The Committee thinks that one of the most serious blocks toward a better fulfillment of the purposes of the Administrative Procedure Act, is the failure of some of the agencies to authorize trial examiners to make initial decisions. Only by giving

the trial examiner who presides at the hearing the responsibility of initially deciding the case, can the agency, the litigant and the Bar finally achieve fair, competent and impartial hearing procedures and reduce much undue delay and expense in agency hearings.

The Ramspeck Case

The action in the *Ramspeck* case was brought by certain federal examiners for a declaratory judgment that the Civil Service Commission's hearing-examiner regulations were invalid and for an injunction against their enforcement.

Petitioners had objected that the Commission's regulations classified hearing examiners into grades, with salaries appropriate to each grade, and that this classification determined not only the compensation which examiners were to receive, but also the type of work which they were to perform. The regulations provided for assignment of examiners in rotation to "cases of the level of difficulty and importance that are normally assigned to positions of the salary grade they hold."

The regulations were held contrary to the APA and declared invalid by the United States District Court for the District of Columbia (104 F. Supp. 734) which judgment was affirmed on appeal by the United States Court of Appeals for the District of Columbia Circuit (202 F. 2d 312) but the Supreme Court reversed, holding that the regulations were within the power of the Civil Service Commission, *Ramspeck v. Federal Trial Examiners Conference*, 345 U. S. 128 (1953). Section 11 of the APA was held to be no bar to these regulations and they

were held to be within the power of the Civil Service Commission to adopt.

With the litigation phase of this issue brought to a conclusion by affirmance of the Commission's regulations in all respects, it is appropriate to examine whether the administration of the Commission's regulations represent the low water mark of the Congressional intent or actually fall below the spirit of the Administrative Procedure Act.

THE CONGRESSIONAL INTENT

a. The objective of Section 11

At the time of the consideration of the Administrative Procedure Act in commending Section 11 thereof to the Congress, the Committee on the Judiciary in Senate Report on S. 7 (Senate Report 752, 79th Cong., 1st Session) stated (at page 29) :

"The purpose of this section is to render examiners independent and secure in their tenure and compensation. The section thus takes a different ground than the present situation, in which examiners are more employees of an agency, and other proposals for a completely separate 'examiners' pool' from which agencies might draw for hearing officers * * * The requirement of assignment of examiners 'in rotation' prevents an agency from disfavoring an examiner by rendering him inactive.

"In the matter of examiners' compensation the section adds greatly to the Commission's powers and function. It must prescribe and adjust examiners' salaries, independently of agency ratings and recommendations."

These laudable aims of 1945 need but be contrasted with the state of the examiner system today to realize that curative measures are in order. Dissatisfaction with the present examiner system was felt by many when incumbent examiners were retained in 1940 after some had been found disqualified by a Board of Examiners. The "freezing" of the registers has caused further discontent. And, perhaps most important, discontent exists among the examiners themselves as evidenced by the *Ramspeck* case, noted above. There is strong feeling that the provisions of Section 11 have not in practice provided examiners with the safeguard to their independence intended.

THE EXECUTIVE

a. *Operation under Section 11 by the Commission and agencies*

The Commission Rules, upheld in the *Ramspeck* Decision of March 16, 1953, have resulted in the delegation and exercise of power over appointment, promotion, salary and tenure of hearing examiners inconsistent with the intention of Congress to make them a special class of independent subordinate hearing officers by vesting much more control in the Civil Service Commission over them than it is empowered to exercise over any other federal employees. By concept in drafting the rules and by Commission interpretation of the respective powers of the Commission and the agencies under them, the agencies exercise control over hearing examiner positions and ultimately hearing examiners as follows:

1. The agency controls the number of grades of hearing examiner positions it

shall employ. The Commission merely acquiesces in the number of grades requested by the agency and appraises positions for each grade according to the work of the agency. There is no objective over-direction by the Civil Service Commission to compel agencies to confine the number of grades to a lesser number if the agency determination is not supported by a bona fide classification of its hearing work. Specifically, the agency is allowed to retain whatever system of classification it has practiced for all of its employees. When the Commission merely accedes to the agency practice of classifications, to that extent it condones and preserves the pre-Administrative Procedure Act concept of agencies that examiners are mere employees.

2. The Commission exercises no power as administrator, umpire or arbiter to carry out the legislative will to assign qualified and competent examiners to cases "in rotation so far as practicable." Each agency makes its own policy as to classification of cases in the grades of difficulty or importance without any interest or effort on the part of the Commission to determine whether such classification of cases is arbitrary, unreasonable or designed to frustrate the major purpose of the drafters of Section 11—to employ rotation "as far as practicable" instead of *as little as practicable*.

3. While it is true that since 1946 there has tended to be fewer grades of examiners and those grades have tended upward, the Commission exercises no administrative function or activity which prevents the freezing, or the possibility of freezing, some examiners in their existing grades, and at the same time promoting others, no better

qualified. In so far as the Commission permits agencies to have multiple grades and does not require the assignment of cases of all degrees of difficulty and importance in rotation among examiners of all grades, the agencies can control the salaries and grades of examiners. Since the Administrative Procedure Act does not require that an examiner make initial decisions in every case where the examiner has presided for the agency, the agency has wide latitude to control the general stature of its examiners, by the choice of particular examiners, to preside at all hearings where initial decisions will be made by them. Thus, in so far as the agencies do not authorize certain examiners to issue initial decisions, the agency can control and freeze the salary and grade of such examiners at lower levels.

The agency can practice assigning cases with grades of difficulty and importance out of line with the grade of the examiner to which they are assigned; for example, if simple and unimportant cases are continually assigned to an examiner with a grade entitling him to more difficult case assignment. While it is true that any examiner affected may appeal to the Civil Service Commission to acquire a grade commensurate with the assignment to him of the more difficult and important cases than the grade and salary he enjoys, the opposite situation would tend to freeze the examiner to his existing grade by such agency practice.

4. As the Commission interprets the law under which it acts, it has no power to initiate removal proceedings for any cause. It has adopted no policy, procedure or practice to obtain or process complaints from the public lodged with it or agencies con-

cerning misfeasance, malfeasance of examiners or lack of personal qualities actually employed by examiners in the conduct of hearings since the Commission first found them qualified. Once an examiner is qualified, his file is inactive until some new action is requested such as request for a promotion. The Commission conceives that its duty is done when it finds one qualified to be an examiner, certifies this fact to the agency, and the agency hires. The Commission considers an examiner an agency employee from the date he is actually hired.

5. The Commission has shown no ingenuity to carry out the intent of Congress in the continuous supervision of individual examiner performance nor have they adequate criteria for objective judgment of the performance of individual examiners. The personnel of the Commission in performing the job of investigation of the entitlement of particular examiners to promotion seem to have inadequate background and experience to know how to administer this special type of government employee. The practice of consulting the agency concerning promotions is inconsistent with the mandate of the statute forbidding agency ratings for its examiners. In fact, getting such ratings informally is an indirect method of doing what the statute specifically forbids.

6. The Commission closed its register of examiners nearly five years ago. Some agencies have ignored it, to select their own employees as examiners. Agency employees need not be reached on the eligible Examiner Register. They only need Civil Service status and an agency need only request the Commission to review the employee's special experience with the agency

as the qualifying factor for their eligibility for appointment as an examiner. If the Commission finds such experience satisfactory, it certifies such agency employees to the agency for employment as examiners notwithstanding its register.

In some cases, those reached on the register outside of the employ of the appointing agency have been offered temporary jobs while, at the same time, selections from among agency employees have been given permanent positions. In addition, the power of the agency to (1) create or fail to create new positions, (2) fill or fail to fill vacancies in positions, (3) accept the transfer of examiners from other agencies as well as (4) promote its own hearing examiners from lower grades to the vacant position, gives the agency the power to pervert to the point of uselessness the regular, orthodox selection of examiners from a register established by the Commission.

7. Even the defenders of the present system of centralized administration of examiners by the Commission admit that there are inferior and unqualified examiners, and that the Commission was wrong in yielding to pressure regarding the certification of some incumbent examiners. There are no procedures for the removal of such incompetents and yet the proponents of the present system want to continue the same provisions of existing law and the regulations and practices of the Commission and agencies adopted pursuant thereto.

SUMMARY:

Without in any way determining or assessing responsibility for this situation, it might be suggested, with the advantage of

hindsight and several years' experience, that an independent examiner system by its very nature cannot be assimilated into or superimposed upon an agency-employee Civil Service system. Thus, measuring the implementation of Section 11 against the intention expressed in its legislative history, there is an apparent discrepancy and obvious need for remedial legislation.

It seems from the foregoing that there is little to recommend a continuation of the present system of centralized administration by the Commission of the appointment, tenure, salary and promotion of hearing examiners. There is a substantial lack of concept in the Commission to administer this special class of government employees commensurate with the basic purposes of the Administrative Procedure Act. The procedures followed by the Commission in handling appointment, salary, tenure and promotion of all other employees of the government are entirely unsatisfactory to remove agency control, directly or indirectly, of examiners.

* * * *

In view of the basic problems which have arisen with the present central administration of examiners under the Administrative Procedure Act, amendment of Section 11 and lodging the power of appointment in the President and fixing the salary high enough to attract the best-qualified judicial type of personnel with tenure during good behavior seems desirable.

Without suggesting any constructive alternative to the present failure of administration of the examiner system, opponents of Presidential appointment of hearing examiners pose the objection that Presidential

appointment will subject examiners to politics and their appointment to political considerations rather than merit. They seem to forget that every agency head and every independent establishment of the government is appointed by the President. Cabinet positions whose departments utilize examiners are filled by political appointees. Likewise, the President must adhere to bipartisan political provisions of the statutes creating multiple-headed agencies and independent establishments, including the Civil Service Commission. Can it be said that political appointees in the Cabinet and independent agencies, born and bred in politics, after appointment suddenly undergo political brain washing so that they make more commendable sires of examiners than the President who appointed them in the first place? Obviously, to answer the question is to destroy the argument against Presidential appointment of examiners.

The danger of political pressures involved in Presidential appointment of examiners has never been of serious concern in the appointment of the federal judiciary and certainly the argument has no greater weight in connection with the appointment of examiners. Further, it is somewhat ludicrous to contend that political pressures would play a greater part in action by the President and the Senate than they would in actions by a creature of Congress, the Civil Service Commission, whose members are appointed by the President. Regardless of how appointments are made throughout the federal service, the opportunity for political pressures is present. We need impugn the motives of none but rather rely upon the integrity of the Chief Executive

and the members of the United States Senate.

S. 1708

This Bill was introduced on April 21, 1953 by Senator McCarran, Chairman of the Senate Judiciary Subcommittee on Improvement in Judicial Machinery (99 Cong. Rec. 3581). S. 1708 would amend Section 11 of the Administrative Procedure Act to provide that "the President shall appoint, by and with the advice and consent of the Senate, to and for each agency such number of qualified and competent examiners as may be required for proceedings pursuant to Sections 7 and 8." The Bill provides that such appointments shall be made without reference to political affiliations and solely on the basis of character and fitness. This is in contrast to the present provisions of Section 11 which provide for appointment of examiners by the agencies which, as above discussed, means appointment of an "eligible" certified by the Civil Service Commission from its registers of eligibles for various grades.

S. 1708 provides that examiners shall receive compensation at the rate of \$14,000 a year, shall hold office during good behavior, and may be removed only for neglect of duty, misconduct in office, or physical or mental disability. With respect to removal, the Bill further provides: "Removal of any examiner for any cause may be accomplished only upon final order of the United States District Court for the District in which such examiner is stationed in a civil action for removal instituted by the agency in which such examiner is serving. No ex-

aminer shall be removed from office by reason of any reduction in force within any agency, any reorganization of or affecting any agency, or for any other reason (except for cause as herein provided) unless provision for such removal is made expressly by law hereafter enacted." The present provisions of Section 11 on these points provide that examiners are removable only for good cause determined by the Civil Service Commission after opportunity for hearing, and that they are to receive compensation prescribed by the Commission independently of agency recommendations or ratings.

S. 1708 further provides that examiners shall be "administrative judges" and that within any agency, "they shall be assigned matters and proceedings in rotation except to the extent that their unavailability may otherwise require." It also provides that upon a showing of need, at the direction of the President, one agency may obtain the temporary services of examiners from other agencies on a reimbursable basis. The comparable provisions of Section 11, now provide that examiners are to be assigned to cases in rotation as far as practicable and that one agency may, with the consent of another and upon selection by the Civil Service Commission, borrow examiners from another.

In brief, S. 1708 would remove examiners from the jurisdiction and control of the Civil Service Commission and the employing agencies. Examiners would occupy much the same position as federal judges rather than Civil Service employees. Their appointment would be by the President with the advice and consent of the Senate,

the salary would be fixed by statute, tenure would be for good behavior, and removal would require an order of a United States District Court or an act of Congress.

DISCUSSION

While the method of appointment is distinctly different, S. 1708 is otherwise not a major departure from the original concept of the examiner system held by Congress at the time of the enactment of the Administrative Procedure Act.

In view of the problems which have arisen with the present examiner system, amendment of Section 11 of the APA as proposed by S. 1708 seems desirable. The Bill would make examiners "administrative judges" and take advantage of the time-proven appointment procedure applicable to federal judges. Indeed, there is every reason to consider federal examiners in much the same status as federal judges. The growth of administrative law in the last few decades is well known.¹ Without exaggeration it can readily be stated that the decisions of examiners involve comparable responsibility and often have a greater impact on the national economy than the average decisions of District Court judges.

In recent years, federal statutes have generally made use of broad standards rather than detailed prescriptions of agency authority. And, as the standards prescribing the grants of authority to the executive branch have become more flexible, so too has the attitude of the Supreme Court to-

¹ See "A Decade of Administrative Law: 1942-1951", Schwartz, 51 Mich. L. Rev. 775 (1953).

wards this type of statute.² Indeed, it would be difficult to surmise at what point we might reach the unconstitutional delegation of the legislative function, short of an outright abdication of that function.

In this broad and growing field of administrative law, which embraces and regulates countless industries and fields of endeavor, where Congress has so often seen fit to delegate authority with only broad, general standards for the guidance of the agency in the exercise of that authority, and where the quasi-judicial functions of those agencies are to such a great extent exercised initially by the hearing examiner, frequently without review by the agency or courts, it is of the utmost importance that those hearing examiners be competent and assured the independence appropriate to a quasi-judge.

Your Committee, by a majority of its members, favors the enactment of S. 1708 and recommends the adoption of a resolution to that effect, for Section approval and submission to the House of Delegates.

/s/ Robert F. Jones

ROBERT F. JONES, Chairman

For a Majority of the Committee

² In *Lichter v. United States*, 334 U.S. 742, 68 S. Ct. 1294 (1948), the provision of the Renegotiation Act authorizing the recovery of "excessive" profits, without definition, was upheld. See *Fahey v. Mallonee*, 332 U. S. 245, 67 S. Ct. 1552 (1947). The standard contained in the Communications Act, "public interest, convenience, or necessity", while concrete and sufficient in the opinion of the Supreme Court, *National Broadcasting Co. v. United States*, 319 U. S. 216, 63 S. Ct. 997 (1943) has been characterized as appearing "to add little to an enabling act." See "Administrative Law", 51 Mich. L. Rev. 775, *supra*, at 782.

Additional Views of Mr. Clifford R. Stearns and Miss Elizabeth C. Smith

Mr. Clifford R. Stearns believes that the following amendment to the resolution of the Committee should be adopted:

"It is the consensus of the Congress that the President in making the appointments under this Act, give first consideration to those incumbent hearing examiners who are duly qualified; Provided, that not more than sixty percent of the hearing examiners appointed under this Act shall be of any one political party; and Provided further, that the compensation of incumbent hearing examiners shall be that authorized by this Act."

Mr. Stearns believes that those qualified incumbents of existing Federal Trial Examiner positions should be given the protection which his amendment would afford.

Miss Elizabeth C. Smith endorses the proviso portions of the amendment only, and states that she believes such a formula for the appointment of trial examiners by the President would be consistent with the legislation creating administrative agencies in the Federal Government which provide for bi-partisan composition of such multiple-headed agencies.

ADMINISTRATIVE PROCEDURE ACT COMMITTEE REPORT

1. The Administrative Procedure Act Committee recommends that the Council approve the Proposed Resolution above stated and urge its adoption by the House of Delegates of the American Bar Association. We hereinafter summarize our rea-

sons for the overall position and for the alternatives stated in the Resolution.

2. S. 1708 was introduced on April 21, 1953 by Senator Pat McCarran of Nevada whose introductory remarks include these:

" . . . The independence and impartiality of hearing examiners is absolutely essential if the Administrative Procedure Act is to operate successfully.

" . . . It appears necessary for the Congress to enact legislation preserving and protecting the independence of the corps of hearing examiners; . . . "

No comparable bill has been offered in the House of Representatives. S. 1708 has not been brought to hearing, but it has been extensively discussed. A copy of the Bill is attached. The background of the administration of Section 11 of the Administrative Procedure Act, from which the need for legislation derived, has been widely criticized as well as litigated. This report would be unduly extended if it should undertake to summarize Section 11's administration. Significant background material is to be found in these sources and others therein cited: 6 Admr. Law Bulletin 10; 39 A.B.A.J. 933; 37 A.B.A.J. 641; 63 Harv. L.R. 737; Sen. Doc. No. 82, 82d Cong., 1st Sess; 41 Ops. Atty. Gen. 14; and *Ramspeck v. Fed. Trial Examiners' Conference*, 345 U.S. 128 (Opinion below is at 104 F. Supp. 734).

3. This Committee proceeds from the premise, which has long been accepted and advocated by the American Bar Association and which was stated by Senator McCarran, that the independence and impartiality of hearing examiners is indispensable to

fair adjudication under the Administrative Procedure Act. Completely unbiased decision is to be expected only if the hearing and deciding officer is, and if he *knows* that he is, free to act independently and conscientiously as his judgment dictates and without apprehension that his personal welfare and official status may be altered, either by innocent mistake or by overt design or by obscurely subtle maneuver, by administrative actions which legally can be taken by the agency whose cases he tries. Hearing examiners have not obtained and do not possess assurance of this independent status under Section 11 as administered by the Civil Service Commission under its regulations.

4. The regulations of the Civil Service Commission were challenged by a group of hearing examiners, successfully before Judge Laws in the District Court and before Judges Proctor and Miller and Bazelon (with Bazelon dissenting), in the Court of Appeals, and unsuccessfully in the Supreme Court with Justices Black, Douglas and Frankfurter dissenting. The civil service regulations and practices under Section 11 clearly permit these possibilities of influence upon, and thus impediments to the free exercise of independent judgment by, hearing examiners:

(1) Agencies initially select and appoint hearing examiners, subject to Civil Service Commission approval procedures comparable to those applied to all civil service employees;

(2) Agencies determine the position grades and consequently the salaries, within Civil Service Commission approved limits, at which hearing examiner appointments are made;

(3) Agencies choose examiners to be assigned to particular cases by predetermining the "level of difficulty" of cases on the basis of subjective criteria which Mr. Justice Black called "conceptualistic distinctions" which enabled the statutory mandate for rotation of cases to be "buried under words";

(4) The discriminatory and selective case assignment device results in continuing agency control of the hearing examiner's salary because:

(a) The "level of work" thus fixed underlies the Civil Service Commission's determination of the grade of the position; the direct relationship between salary level and position grade obtains regardless of whether such determination is made periodically, or on request of the agency, or on request of the incumbent, or for selective promotion purposes;

(b) Any hearing examiner's position may be increased or decreased in grade level because of the agency's accidental or intended advance subjective misjudgment as to the level of difficulty of cases assigned.

(c) If an incumbent hearing examiner's existing position grade is found by Civil Service Commission to be too low, a *new position* is created which, at the option of the agency, may either (1) remain vacant or be filled by: (2) appointment from the agency's non-hearing examiner staff; or (3) appointment from the register; or (4) by transfer of a hearing examiner from another agency; or (5) by promotion of a hearing examiner from a lower grade. If the agency elects method (5), and only then, the "regraded" incumbent may compete

against all of his colleagues in his and lower grades for the new position.¹

(5) An agency can determine when it has and desires to fill a vacancy in any selected hearing examiner position grade and, as indicated above, it can decide how to fill the vacancy. The obviously difficult method of promotion may be chosen, and only then does the Civil Service Commission exert its authority to select the examiner for promotion.

(6) In addition to the appointing and compensation and selective assignment administrative controls available to agencies, the tenure of hearing examiners is dependent upon the unfettered exercise of administrative judgment by the agencies. An agency may determine: to effect a reduction in force; the number of examiners to be fired; and the position grade or grades in which the firings shall take place. These agency determinations are not subject to review by the Civil Service Commission, notwithstanding dictum in the majority opinion in the Ramspeck case which implies otherwise. In the absence of specific directives by Congress, each federal department and agency determines how it shall expend its appropriated funds for personal services among its various bureaus and divisions, including those in which hearing

¹ The factual basis for this analysis is found in the Commission's regulations governing appointments and promotions of hearing examiners and in the allegations which were conceded to be true in the Ramspeck case. Other civil service employees are ordinarily promoted when an upward reallocation of their positions occurs. The tedium and delay growing from this cumbersome process is illustrated by this brief chronology of hearing examiner position classification and promotion actions at the Department of Agriculture. Five GS-14 positions and incumbents were non-competitively involved. Eighteen months after promotion requests for all were made, Civil Service Commission determined the incumbents' work to be of the GS-15 level and ten months later the Commission authorized the incumbents to be promoted. The 28 months gestation period extended from May 1951 to September 1953. No reliable prediction can now be made as to the date or nature of the Civil Service Commission's action on Interstate Commerce Commission hearing examiner promotion requests which have been pending since July 1953, and which involve some competitive selections, although simultaneously requested promotions of attorneys were affected in less than 30 days.

examiners serve. The Civil Service Commission has no authority to review or modify the exercise of that discretion. Moreover, reductions in force are not limited to circumstances of an agency-determined shortage of funds or surplus of personnel; reductions in force can be effected in the name of more efficient operation, for reorganizations, or for other reasons, and here also Civil Service Commission has no authority to modify the operating agency's decision.

5. The existence of sanctioned powers within agencies to control the appointment and pay and promotion, and tenure and case assignments of hearing examiners constitutes a barrier to their independence and impartiality, even in the absence of cited instances of trials and decisions influenced by manifest exercise of such powers. The atmosphere of administrative adjudication is no more cleared by agency benevolence in wielding its powers than it is made wholesome by undetectably subtle agency pressures. Although the Supreme Court opinion referred to these evils as things imagined by the hearing examiners, we face the fact that imagination is a human trait and the psychological impediment to unbiased judgment arises if the hearing officer believes his self-interest is advanced or retarded as he pleases or displeases his agency; his awareness of the possibilities precludes an unbiased approach to his hearing and decisional responsibilities, and this is true despite his utmost efforts honestly to balance or ignore the pressure potentials.

6. This Committee does not believe that civil service administration of hearing examiners under Section 11 can be so improved as to achieve the fair hearing and impartial adjudication by independent of-

ficers which the Act intends shall exist. We view the Commission's traditional career service principles, practices and experiences as inherently unsuited to the management of personnel who must independently exercise judicial functions in widely diversified fields. Competitive promotions, multiple pay scales, position classifications, work-level concepts, and most importantly the Commission's fundamental service mission of adapting personnel practices to the needs and desires of the agencies and departments, are formidable obstacles to development by the Commission of a corps of competent independent judicial officers. As Attorney General Brownell said to the President's Conference on Administrative Procedure: "... the Commission's functions under Section 11 of the Administrative Procedure Act are entirely different than its other functions in administering the civil service laws."

7. The shortcomings of Section 11's administration as set out in paragraphs 3-5 above would be substantially relieved by S. 1708. Administrative judges would be wholly free of actual or potential pressure influences emanating from the agencies whose cases they would hear and decide. The fear of political influence finds little support in the total history of the Federal Judiciary. Federal judges do, and S. 1708 administrative judges would be expected to, leave political considerations behind as they enter the tenure of good behavior. Although politics, contrary to S. 1708, might weigh upon initial appointments, administrative judges would thereafter be free to discharge their official duties without the persistently nagging obstacles to impartiality which exist under the present hear-

ing examiner system. Competition and strife for promotions—strangers to judicial administration—would be at an end among officers adjudicating administrative law cases. The hazards of discriminatory work assignments and pay and of job insecurity would be eliminated under S. 1708. Compensation both adequate and stable under S. 1708 would attract and hold highly competent lawyers to the administrative judge positions.

8. It is our view that the changes provided by S. 1708 would not burden the President or the Senate, would not seriously disrupt agency adjudications, and would not extensively dislocate competent hearing examiners who now serve. There are about 275 incumbents appointed under Section 11. We anticipate that as a practical matter, and consistently with S. 1708, the President and the Senate would recognize the needs of the agencies to retain experienced and competent hearing officers; for others we have no concern paramount to our recognition of the need for fair and efficient hearings and decisions. We have confidence that the President and the Senate would honor the mandate of S. 1708 for appointments "without reference to political affiliations and solely on the basis of character and fitness."

9. This committee's conviction that legislative reform of Section 11 is essential to the purposes of the Administrative Procedure Act leads to brief consideration of a possible alternative or supplement to S. 1708 suggested by the Minority Report of the President's Conference Committee on an Office of Federal Administrative Procedure. Neither proposed legislation nor

Conference action now defines the measures needed to create an independent office or body to administer hearing officer personnel. A possibility exists that legislation may be offered to establish such an office, (as the Attorney General's Committee recommended in 1941), which could effectively serve administrative adjudication as an independent office "somewhat comparable in dignity and responsibility to the Administrative Office of the United States Courts." We believe the ends of fair hearing and impartial decision might be well served by a properly constituted and empowered Office of Federal Administrative Procedure wherein the safeguarding of legislatively proclaimed assurances of a competent corps of independent examiners might be entrusted.

10. The Committee recognizes that improvements in the scope and substance of S. 1708 may be desirable. Changes furthering the cardinal objectives stated in the resolution should receive the Association's support. For examples: measures might be offered for administration of case assignments, for vacation, leave, retirement, payroll and housekeeping functions so as to relieve in these areas possible irritations or uncertainties; tenure security might be otherwise or more definitively specified to dispel apprehensions or subserviency to Congress; the examiner removal process might be redefined to permit initiation other than by agencies or effectuation other than by the Courts; proposals to assure efficient examiner utilization and competent productivity without agency control or influence on adjudication might be devised; or a plan might be suggested for an examiner corps

entirely detached from separate agencies with a feasible system of centralized assignment so as to preserve independence and achieve expeditious adjudication. These are now intangible possibilities suggested by various members of the Committee and are not herein advocated; rather they illustrate, not comprehensively, our view of the importance of first defining unequivocally the objectives for which the Association should strive, and then meeting the necessity for asserting a meaningful and constructive, but not inflexible, course of action within those purposes.

11. This Committee has endeavored to avoid the snare of losing the forest of administrative due process among the trees of the processes of administration. The elemental principles of due process—fair hearing and impartial judgment by independent officers—have not effectively shaped the administrative measures which have been developed under Section 11. The restoration of those principles to their proper and necessary eminence requires a new legislative mandate for a different hearing officer system. In our view the issue to be squarely met by the American Bar Association is whether we shall or shall not move to support remedial legislation to achieve what was intended but not accomplished by Section 11; the achievements aimed at are those objectives stated in the Proposed Resolution which we approved and now advocate for adoption by the Association. A solid affirmative stand for needed reform is commended as far superior to either a defeatist and dilatory posture of hopeful resignation or a quibbling position of inaction bottomed on indecision

about the multitude of administrative means for purposeful accomplishment.

12. The individual preferences of committee members for either S. 1708 or an Office of Federal Administrative Procedure or an integration of these plans do not bar the majority's agreement that either measure would afford great and needed improvement in the law and in administrative hearings and adjudication. Furthermore, we deem it not inconsistent to endorse, and to urge the American Bar Association to endorse, the proposed resolution in its alternative form and content. Believing that the alternatives are not mutually exclusive, our view is that the objectives of each are identical and either would further those objectives. The recognized fundamental importance of achieving those objectives girded the American Bar Association's insistent support which led to enactment of the Administrative Procedure Act. It is no less fitting for us now to impel legislative improvement upon the ineffective admitted compromise that is Section 11. We advocate adoption of the Proposed Resolution as a step by the American Bar Association to advance legislation which will enable the public confidently to expect, lawyers assuredly to receive, and hearing officers unequivocally to accord, fair conduct and just determinations of administrative law proceedings.

ADMINISTRATIVE PROCEDURE ACT COMMITTEE

/s/ J. D. Bond,

By: J. D. Bond, Chairman

CHAIRMAN'S PAGE

By the time this Bulletin reaches you it is hoped that S.24, which would overcome the rule of the *Wunderlich* case (342 U.S. 98) will have been adopted into law; for it is pending before the President as this is written. Support of this bill by ABA is a project originating with this Section; and two of the Section's committee chairmen (Rufus G. Poole, Chairman of the National Committee; David Reich, Vice-Chairman of Committee on Finality Clauses) appeared in the House of Representatives and testified on behalf of the American Bar Association.

Pursuant to the authorization by the Midwinter Meeting of the House of Delegates, our Section Delegate, Ashley Sellers, and Rufus G. Poole also appeared before the Kintner Committee on Hearing-Examiners of the President's Conference on Administrative Procedure to present the views of the Association with regard to the hearing-examiner problem. As this is written, the committee has completed its hearings, and is facing the problem of drafting a report.

S. 18, 83d Cong., has passed the Senate and is pending before the House Committee on the Judiciary. That bill would repeal specific exemptions from the Administrative Procedure Act which have been adopted in a variety of bills over the years since the passage of APA. The bill appears to be stalled in the House Committee on the Judiciary, where as yet no hearings have been ordered. This is related to some vague "objection downtown" by a staff member;

and in an effort to see if progress cannot be made toward overcoming the anonymous resistance to the measure representatives of the Section [the Chairman and Messrs. Rufus G. Poole, J. D. Bond (Chairman of the Committee on Administrative Procedure Act) and L. Clair Nelson (Vice-Chairman, National Committee)] in company with Honorable Clarence A. Davis (Solicitor, Department of the Interior) waited upon Attorney General Herbert Brownell, Jr., to request administration support of the measure. The representatives of the Association were cordially received by Attorney General Brownell, who paid close attention to the points made.

May 4, 1954, this Section and the Committee on Unauthorized Practice of the Law appeared before Task Group IV of the Hoover Commission Task Force on Legal Services and Procedure in connection with the problem of admission to practice before administrative agencies. The two groups have for years been authorized jointly to represent the American Bar Association in support of the Administrative Practitioners Act. The representatives on this occasion were Messrs. F. Trowbridge vom Baur (Chairman, Committee on Administrative Practitioners, Admissions and Ethics, of this Section) and Thomas J. Boodell (who, in addition to section membership in this Section, is Chairman of the ABA Standing Committee on Unauthorized Practice of the Law). At the hearings in the first week of May many bar groups were heard, as were some of the agencies principally concerned with the matter of a register of attorneys admitted to practice before them.

In Boston the Association approved a Section project, the Good Faith Reliance Act S. 1752, 83d Cong.). Reports of the various agencies have only straggled in. Your officers have endeavored to obtain a prompt hearing on the measure; but as yet no hearing date can be set for want of some key reports. Accordingly, we are devoting attention to the problem of getting those agency reports to the Senate Committee on the Judiciary so that hearings can be held.

There is to be enclosed with this issue of the Bulletin an inquiry concerning committee assignments desired by Section members. This is going out well in advance of the incoming Section administration you will elect in Chicago, so that Section organization by the new Chairman can be completed in less time than would be the case were he to make the circularization only after election. The size of the Section is such, and the concentration of interest within the Section is such, that in the nature of things not all who might like to do so can be selected to serve on committees. Especially will that be true where you limit your choice to only the most popular committees. Inevitably more requests for assignment to the Committee on Administrative Procedure Act and the Committee on Improvement of Administrative Procedures are received than can be honored. If you have qualifications which would aid one of those committees in its work, to be sure you ought to give the new Chairman an opportunity to know of those qualifications and of your interest, and indicate your desire for appointment to that committee. But if your only reason or qualification for asking that assignment is that you hope in some way

you will learn a little more about the Administrative Procedure Act, about which you may feel a dim or uncertain recollection, then you would better choose a less popular committee, say an agency committee in some field in which you have particular interest.

Since, too, some individuals in bar-association work inevitably seem to take the view that committee membership is a mere honor, and so do not respond to communications from the committee chairmen or at any rate do not take any initiative in undertaking particular assignments or communicating at all with the committee chairmen, a reconsideration of the entire committee membership is necessary from time to time. It may be that for some unusual reason you have not taken an active part in committee work this last year even though you were a member of a committee. In that event, you should say why continued membership in the committee on your part would be warranted.

The Section has become a dynamic professional force in the field of administrative law. It can increase its prestige and its actual effectiveness in improving the administration of justice within this field, or it can backslide. It will increase its prestige if it has able and forceful committees who actually get their work done and report the results of their studies, and where indicated make their proposals to the Council and to the annual section meetings for section action and possible adoption as the position of the American Bar Association.

John W. Cragun,
Section Chairman.

